SKP

Tax Street

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

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WORLD TAX
RECOGNISED FIRM
2019

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SKP TAX STREET

INTRODUCTION

We are pleased to present the inaugural edition of our newsletter –Tax Street that aims to cover all the key developments and updates in the realm of taxes in India and globally for the month of January 2019.

The Indian tax landscape was marked by some significant revision of regulations apart from some crucial judicial announcements and rulings in the realms of direct tax, transfer pricing, and indirect tax in the last month. In this inaugural issue of Tax Street, we have tried to, for the very first time, collect and coalesce all such significant developments to draw a clear picture of the current tax landscape in India for your understanding.

- Under the **'Focus Point'** section, we discuss the most important regulatory change in the recent time – easing up of foreign currency borrowing regulations.
- 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'** section, provides key updates on the important tax-related news from India and globally.
- Under the **'Compliance Calendar'** section, we list down the key due dates with regards to direct tax, transfer pricing, and indirect tax in the upcoming months.

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 what would you like us to cover.

Warm regards,
The SKP Team

FOCUS POINT

Reserve Bank of India eases External Commercial Borrowings Regulations

Amidst the recent global challenges and trade-wars, many developing countries (including India) faced macroeconomic issues due to weakness in their currency. The Indian Government has taken many steps to protect the devaluation of its currency by carrying out open market operations in currency markets, boosting exports, putting in place additional import duties, etc. India has taken yet another step in boosting its foreign reserves by liberalizing the foreign currency loan regime. There was also a constant pressure and expectation from the Reserve Bank of India (RBI) to reduce the interest/borrowing costs.

External Commercial Borrowings (ECB) regime provides for a framework for the Indian corporates to avail foreign currency loans from an overseas lender. Over the years, the ECB regime has undergone significant changes, however they are still perceived to be stringent and with many restrictions. Accordingly, the RBI, vide A.P. (DIR Series) Circular No. 17 dated 16 January 2019, has revised the extant ECB framework, which signifies a major change in the policy of the Indian Government. The new framework is instrument neutral and would further strengthen the Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) framework.

Below is a comparative analysis of the key changes:

Particulars	Existing Regulations	Revised Regulations
Definition of Indian Entity	Means a company or a corporate body or a firm in India.	Definition has been expanded to include Limited Liability Partnerships (LLPs). Impact This was one of the negative aspects for LLP, which is now rectified, and would be a big boost for LLP as a viable entity option for foreign investors.

Particulars	Existing Regulations	Revised Regulations
Eligible Borrowers	Companies in manufacturing and software development, shipping and airlines companies, units in SEZ, EXIM Bank, companies in infrastructure sector, NBFC, REITs and INVITs, Microfinance Institutions, SEZ Developers, etc.	• The definition of 'Eligible Borrowers' has now been expanded to include all entities that are eligible to receive foreign direct investments. • Other Entities, such as Port Trusts, Units in SEZ, SIDBI, EXIM Bank, registered entities engaged in microfinance activities, viz., registered not for profit companies, registered societies/trusts/co-operatives, non-government organizations and Start-ups[1]. Impact This would imply that service, trading entities, etc., would also now be allowed to avail the ECB facility. This is a significant change and would resolve issues of funding for these service and trading companies, which hitherto had relied only on Equity capital from parent companies for their fund requirements.
Eligible Lenders	International Banks & Capital Markets, Multilateral Financial Institutions, Foreign Equity Holders, Overseas branches or subsidiaries of Indian Banks, etc.	• Eligible lender definition expanded to include any entity that is a member of FATF & ISCO for ECB raised in foreign exchange. • It is specifically provided that a foreign investor being an individual can be recognized as a lender only if he qualifies as a foreign equity holder.
Minimum Average Maturity Period	3/5/10 years depending on the quantum of ECB raised.	• The revised ECB framework reduced the overall minimum maturity period to three years. • ECB raised from foreign equity holder and utilized for working capital or general corporate purposes, the MAMP would be five years; • For ECB up to USD 50 million per financial year raised by the manufacturing sector, which has been given a special dispensation, the MAMP would be one year. Impact This increases the attractiveness for the foreign lenders to provide short-term loans, who were earlier anxious to provide long-term loans.

1. Start-ups are entities, which satisfies the conditions laid down in Notification No. G.S.R 180(E) dated 17 February 2016, as amended/updated from time to time

<table>
<tr><th>Particulars</th><th>Existing Regulations</th><th>Revised Regulations</th></tr>
<tr><td>End-use restrictions (Negative List)</td><td>• Investment in real estate or purchase of land except affordable housing.
• Construction and Development of SEZ, industrial parks/integrated townships,
• Capital Market investments
• Equity investments
• Working Capital and General Corporate purposes except for foreign equity holder
• Repayment of rupee loans
• On-lending to entities for the above-mentioned activities</td><td>In addition to the restrictions provided in the extant regulations, additional restrictions have been provided below:

Additional restrictions
• Business of Chit Fund or Nidhi Company
• Agricultural or Plantation activities
• Trading in Transferable Development Rights
• Real Estate Activities now have been specifically defined unlike the extant regulations</td></tr>
<tr><td>Individual limits of borrowing (per financial year)</td><td>Companies could raise up to USD 500 million (specific categories up to USD 750 million) or equivalent.</td><td>• The general limit has been extended to USD 750 million or equivalent
• Oil marketing companies can now raise USD 10 billion or equivalent to obtaining board approval
• Start-ups can raise USD 3 million or equivalent (newly included in a list of eligible borrowers).

Impact
RBI has always been conservative when it comes to capital account transactions. This liberalization would allow Indian corporates to fund their operations by availing ECBs, which could also provide interest arbitrage.</td></tr>
<tr><td>Late submission fees</td><td>No delay was allowed per se. In case of any delay, the only option is going for compounding, which is a tedious process at times.</td><td>Late submission fee regime has been introduced for the delay in reporting requirements in the range of INR 5,000 or INR 50,000 or INR 100,000 per year depending on the period of delay.</td></tr>
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With liberalization of ECB regime, it is expected that many companies may wish to avail its fund requirements through ECB and would have an increase in the debt component. Higher debt component is an age-old tax planning aspect since interest on debt is a tax deductible item as compared to dividends, which are not tax deductible and attract additional 20% dividend distribution tax. However, one must consider the following tax aspects before deciding on an appropriate debt-equity mix.

Interest limiting deduction – Section 94B of the Indian Income Tax Act, 1961

Section 94B of Indian ITA restricts deduction in respect of expenditure by interest (or of similar nature) paid to the non-resident associated entities to 30% of EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization). The provisions do not apply to a banking company and for others the threshold limit is INR 10 million. Furthermore, the interest over the 30% limit can be carried forward for set-off up to eight subsequent years.

The above provision was introduced from FY 2017-18 in line with Action Plan 4 of OECD's Base Erosion & Profit Shifting (BEPS) project.

Indian corporates availing foreign currency loans from related parties should also be mindful of these provisions and properly plan their debt-equity structure so that there is no disallowance of excess interest.

Foreign Lender - Taxability in India and Withholding Tax

The interest paid on foreign currency borrowing would be liable to a reduced tax rate of 5% (plus applicable surcharge and education cess) as per the provisions of Section 194LC of the Indian ITA if the loans were raised prior to 1 July 2020. With these liberalizations in ECB, it is expected that the government may extend the time limit of 2020 to boost foreign inflows. However, it would be advisable for companies to ensure that their ECBs/borrowings are done before the above date to enjoy the 5% tax rate. Since the tax rate is 5%, the Indian company paying interest must withhold tax also @ 5% (plus applicable surcharge and education cess).

Transfer Pricing – Interest rate to be at arm's length

ECB regulations provide for maximum interest that can be charged on ECB. Currently, the limits provided under the ECB framework are benchmark rate plus 450 bps spread. Benchmark rate in case of foreign currency refers to a six-month LIBOR rate of applicable borrowing currency, and for rupee loans, it refers to the prevailing rate of the Government of India securities.

While the maximum ceiling is provided under the ECB regulations, the interest rate for related party loans must comply with the arm's length interest rate from the transfer pricing perspective. Accordingly, corporates are advised to perform an interest rate benchmarking study to save themselves from protracted litigation with Indian tax authorities.

SKP Comments

Most of the developed countries do not have any exchange control regulations, and India has always spoken about moving towards capital account convertibility. This liberalization can be considered as one of the significant move towards that. The revamped regulations are certainly a welcome move as it provides a larger platform for Indian Corporates to have access to global funding.

The revised framework has made certain pragmatic changes allowing trading companies and service companies to raise foreign funds. These would overall increase the attractiveness of India as an investment destination and go a long way in improving India's ranking in ease of doing business index. Furthermore, the introduction of late fees for the delay in reporting is a welcome approach as it obviates unwarranted compounding mechanism. Also, the foreign equity holder or companies would be in a better position to structure funding of their subsidiaries in a flexible manner. Nonetheless, it would have been better if the definition of foreign equity holder was streamlined to include interest in an LLP.

Corporates have been presented with a unique proposition to relook at their current funding structure, and debt-equity mix, and accordingly plan their activities to take maximum benefits of the above-mentioned liberalized framework. This must be planned holistically considering other tax and commercial aspects discussed above.

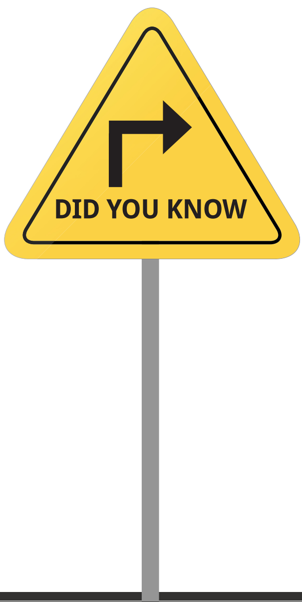
FROM THE JUDICIARY

Direct Tax

Issue	Ruling	SKP Comments
1.GE Energy Parts Inc. v. CIT (2019) 101 taxmann.com 142 (Delhi)		
Whether Liaison Office (LO) and Indian subsidiary of the taxpayer would constitute Permanent Establishment (PE) of the taxpayer in India?	Held • LO – Fixed place PE in India The premises were leased by the overseas group entity of the taxpayer, which was constantly at the disposal. This was evidenced by the specific chambers/rooms and staff allotted to the GE group for their work. It was held that continuous usage of the premises is sufficient to prove that the said premises have satisfied "at the disposal" test. Lastly, the premises was prominently involved in the finalization of contracts or had a major role in finalizing commercial terms, thus, indicating that the overseas GE group entities carried on business in India through its LO in India. • Indian subsidiary – Dependent Agent PE (DAPE) of GE Group Entities Delhi HC upheld the tax tribunal's view that an agent is not required to conclude every single element of a	This decision highlights the importance of documentation, roles and functions carried out by the Indian entity/LO. This clearly shows that the transfer pricing documentation should be prepared with utmost clarity and sincerity and not be treated merely as a compliance activity. This decision will have a far-reaching impact on the MNC's operating in India as it gives an insight into the Indian Revenue Authorities' approach while examining the documents and the internal business structures. Thus, the MNCs operating in India, especially, with LO or through expatriates/long-term deputation should have a re-look at the functions performed in India by the LO/ subsidiary/expatriates in light of this decision. Furthermore, with the introduction of BEPS related measures, now all the activities performed by the LO would require

Issue	Ruling	SKP Comments
	customer contract, and if the same is not auxiliary in nature then such agent can constitute DAPE in India. Furthermore, the Indian subsidiary is performing significant activities for GE's group entities only. Thus, the HC opined that an agent of a foreign company is an agent of dependent status even if there is more than one company in the related group. Thus, GE India constitutes DAPE of GE Group Entities in India.	meeting the preparatory and auxiliary test in order to mitigate PE risk.
2.ACIT v. M/s. Grant Thornton [TS-10-ITAT-2019 (Delhi)]		
Whether payments made to foreign LLPs by the taxpayer is covered under Independent Personal Services and hence would be taxable in the country of residence?	Held Delhi tax tribunal ruled that the professional fees payment by taxpayer (LLP engaged in providing international accountancy and advisory services) to overseas Grant Thornton LLPs for rendition of services to taxpayer's foreign clients would not be taxable in India under Article 15 (Independent Personal Services) of the respective tax treaties and in the absence of fixed place of business in India, TDS u/s. 195 would not be applicable. Furthermore, the tax tribunal rejected the stand of the tax officer that only individuals were covered by the beneficial provisions of Article 15 and hence, in the present case, the service recipients were LLPs, Article 15 was not applicable. Also, the tax tribunal observed that in the tax treaties with the USA, UK and France, it was mentioned in Article 15 itself that it is applicable to both, individuals and firm of individuals. Furthermore, in case of a tax treaty with the Netherlands, the term 'resident' means any person, including an individual, a company, any other body of persons and any other entity, which is treated as a taxable unit. Thus Article on 'Independent Personal Services' is definitely applicable on income derived by a partnership firm or an LLP.	This decision brings a sign of relief for the corporate taxpayers (including LLPs) since whether the Article on "Independent Personal Services" is available for all entities has been a litigation subject for a long time. Though this decision brings about some relief to taxpayers other than individuals, it is still not free from doubts since the wordings of the Article pertaining to Independent Personal Services use the terms "residents" and "he" or "she" simultaneously. Hence, taxpayers need to be mindful of this decision as the Indian Tax Authorities may still claim that the terms "he" or "she" generally mean individuals and therefore LLPs or other corporate entities may not be covered.

Issue	Ruling	SKP Comments
3.M/s. The Procter & Gamble Co. v. DCIT [TS-759-ITAT-2018(Mum)		
Whether Service-tax/R&D cess borne by the service recipients in India would be taxable in the hands of non-residents?	<u>Held</u> Mumbai tax tribunal ruled that the element of Service Tax and R&D cess, which was collected, paid and borne by the India entities cannot be treated as income in the hands of the taxpayer. The tax tribunal rejected the tax officer's stand that since royalty is taxable on a gross basis in terms of Article 12 of the Indo-USA tax treaty, the taxpayer cannot claim a deduction from gross royalty towards service tax & other levies given that it was taxpayer's responsibility to pay such levies to the government. In doing so, the tax tribunal referred to 'reverse charge mechanism' under the Service Tax Act and also referred to the R&D Cess Act provisions, whereby the liability to pay Service-tax and R&D cess was on the Indian concerns. Thus, considering the statutory as well as the contractual framework of royalty agreements, the tax tribunal held that royalty was taxable without including the amount of Service-tax and R&D Cess.	Service Tax and R&D cess are indirect taxes, which are collected from the service recipient and paid to the Exchequer by the service provider who acts as an agent for the purpose of indirect taxes. The decision by the Mumbai Tax Tribunal is a welcome decision since it stresses upon the fact that a portion of statutory and regulatory taxes borne by the Indian entities cannot be taxed as income in the hands of the non-resident counterparts although treaty benefit has been availed to that extent.



Provision of Deemed Dividend is applicable to closely held companies only. However, it is not applicable to cases where the advances or loans are given in the ordinary course of business and where the lending of money is a substantial part of the business of the lending company.

For determining lending as a substantial part of business, taxpayers are not required to follow guidelines laid down by the Reserve Bank of India for Non-banking financial companies.

Transfer Pricing

Issue	Ruling	SKP Comments
1.GE India Industrial Private Limited [ITA No. ITA No. 2781 / Ahd / 2012 – AY 2008-09]		
Whether high customs duty paid on excess imports made by the taxpayer vis-à-vis comparable companies qualifies for an adjustment?	ITAT rejects exclusion of import duty from purchase price on following grounds: Duties paid on imports forms a fundamental part of the cost of material purchased. As a result, in the normal business practice, no independent enterprise would agree for a purchase price without taking into account the duty structure or carriage cost. Even in the case of comparable companies, the rates of excise duty and sales tax paid on inputs, vary as per the nature of the imports. Moreover, the sourcing of raw materials would not affect net margins as the same would be taken care of by the pricing of goods. Sourcing of goods from a local or a foreign market is the choice of the taxpayer and such minor differences shall not affect the profits except in case of special circumstances highlighted in *Skoda Auto India Pvt. Ltd. vs ACIT-2009-TIOL-214-ITAT, Pun*e in which; import of material was mandatory for the taxpayer in its' initial years of operation. In addition to this, exclusion thereof from the purchase price would create the distortion in the price of tested party and will decrease the comparability. Accordingly, ITAT rejects assesse' s plea to provide adjustment on account of high import duty.	Due to the globalized nature of the Indian economy, Customs duty paid on imports cannot be a reason for an adjustment except in special circumstances; wherein the taxpayer does not have the choice of sourcing of materials.

Issue	Ruling	SKP Comments
2. KSS Limited (formerly known as K Sera Sera Productions Ltd) [Bombay High Court - ITA No. 476 of 2016]		
Whether advances routed through AE paid to third party comes under the purview of international transaction?	Held The advances were routed through the AE by the taxpayer due to commercial considerations for the purpose of acquisition of distributorship. It was not a case of financing or lending or advancing of any money. Accordingly, advances were not given for the AE but for third parties (i.e. routed through the AE). As the AE did not retain the advance for a significant period, it did not give rise to an international transaction.	Mere routing of transaction via AE does not give rise to an international transaction. Diversion of income from the taxpayer to its AE plays an important role in the determination of the attraction of the Section 92B.

Indirect Tax

Issue	Ruling	SKP Comments
1. Torrent Power Limited versus the Union of India - High Court of Gujarat [2019 (1) TMI 1092]		
Question 1 Whether essential activities in relation to transmission and distribution of electricity, which were not taxable in the pre-negative list regime under service tax, can now be made taxable under GST by merely issuing a circular? **Question 2** Whether composite supply under GST would cover the cases of composite supply wherein exemption from GST had been granted in respect of principal supply?	**Facts of the case** • In the pre-negative list regime under service tax, transmission and distribution of electricity were exempted through notification. • The Government of India through a circular clarified that the supply of electricity meters for hire to the consumers was an essential activity having a direct and close nexus with the transmission and distribution of electricity, and therefore covered by the above exemption. • In the negative list regime under service tax, transmission and distribution were in the negative list of services and hence was not taxable. • Under GST, similar to the pre-negative list regime, the transmission and distribution of electricity are exempt through notification.	The decision of the High Court is based on the principle of promissory estoppel whereby, the Court has prevented the government from taking a view contrary to the settled position under the service tax law. However, it may be open to the government to tax the said services by bringing in an appropriate amendment in the GST law. Furthermore, though the subject of this case involves the electricity sector, this judgment would also have implications for businesses where the principal supply is exempt, and the GST law is silent on the treatment of ancillary supplies. The scope and extent of composite supplies thus remain to be tested in subsequent litigations.

Issue	Ruling	SKP Comments
	• Furthermore, the government vide Circular No. 34/8/2018-GST dated 1 March 2018 (impugned circular) clarified that charges, such as application fee, meter rent, testing fee, etc., collected by electricity companies are taxable under GST. **Applicant's contentions** • The said charges are towards services, which are mandatory to provide as per the sections 42 and 43 of the Electricity Act. • As per exemption notification and circulars issued these services were not taxable under service tax. • Now, even if the government intends to revoke such an exemption, it has to be done prospectively by a notification and not by a clarificatory circular. • By the virtue of section 173 read with section 174(2) (c) of the CGST Act, all privileges and rights under the service tax law were to continue and therefore, what was covered by a notification could not be withdrawn by a circular. • Alternatively, the said services should be treated as naturally bundled with the principal supply of transmission and distribution and therefore, taxable as a composite supply, at the rate of tax applicable to the principal supply, i.e., exempt from tax. **Question1** The High Court observed that: • The government for the entire duration of the negative list regime had proceeded on the basis that these services were included in the transmission and distribution of electricity and therefore no demand was raised till date by the department.	

<table>
<tr><th>Issue</th><th>Ruling</th><th>SKP Comments</th></tr>
<tr><td></td><td>By issuing a clarificatory circular, the government had sought to give a different interpretation of the very same services as against the clarification issued for the pre-negative list regime.
Thus, the impugned circular to the extent it makes the said services taxable under GST is ultra vires the GST law and is struck down.
Question 2
The government contended that in the present case, since the principal supply is exempt from the levy of the tax, the provisions of composite supply would not be applicable.
The court opined that there was nothing in Section 8 (tax liability on composite supplies) of the CGST Act to read any such construction. Therefore, even if the end result is nil tax liability, the said services cannot be taken outside the purview of the composite supply.</td><td></td></tr>
<tr><td colspan="3">2.GGL Hotel and Resort Company Limited - Authority for Advance Ruling (AAR), West Bengal [2019 (1) TMI 488</td></tr>
<tr><td>Whether ITC is available for lease rent paid during the pre-operative period (i.e., the period till the construction is completed) for the leasehold land on which the resort is being constructed and treated as a capital expenditure?</td><td>The applicant stated that since the lease rent for pre-operative period was capitalized under the accounting head ‘Leasehold Land’ and not under ‘Building Block’, it could be inferred that such services received were not for construction of the immovable property, and there was no direct or indirect nexus between them.

The AAR ruled that for the applicant to enjoy uninterrupted right to use the land, it was required for the applicant to procure the impugned services. Thus, merely capitalizing the lease rent under a different heading is of little significance in the context. Hence, the AAR ruled that ITC was not available to the applicant for the lease rent paid during the pre-operative period in this case when the same was capitalized.</td><td>In line with the precedents laid down by various AAR’s in the past, the current ruling is based on the substance of the transaction rather than the accounting treatment adopted by the taxpayer.</td></tr>
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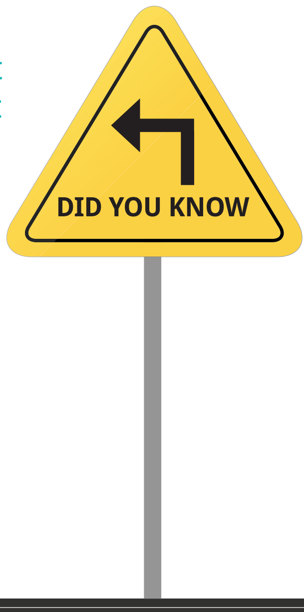
Issue	Ruling	SKP Comments
3.Nforce Infrastructure India Pvt Ltd - AAR, Karnataka [2018 (12) TMI 534]		
Whether the GST liability arises on the value of the building constructed under the GST regime and handed over to the landowner in terms of a Joint Development Agreement?	The applicant is engaged in supplying construction service of building to the landowner against the consideration of the transfer of development rights of such land. The applicant intended to obtain clarity on the taxability of the said transaction under the GST law. In this regard, the AAR held that the said transaction is squarely covered by para (b) of Notification No. 4/2018-Central Tax (Rate) dated 25 January 2018, and hence the applicant is liable to pay GST for the service provided to the landowner. Furthermore, the value of supply should be determined in accordance with para 2 of the Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017. Furthermore, the AAR also held that in accordance with Section 142(11) of the CGST Act, 2017 the applicant has to pay service tax/GST proportionate to the services provided before/after the introduction of the GST regime.	In a growing trend under the GST regime, the applicants have been filing advance ruling applications to gain more clarity on issues involving disputes between the parties to the transactions. Furthermore, clarity on the issue of taxability of the transfer of development rights should also give a boost to the infrastructure sector since it is a common development model adopted by builders and landowners.

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

There is a popular belief in the industry that the increased GST registration and payment threshold limit of INR 4 million is applicable to all businesses.

However, as decided by the GST Council in its 32nd meeting, each State will have the option to implement the increased threshold limit or to continue with the current limit of INR 2 million. Businesses should ensure that they comply with the limit decided by the State in which they are conducting their business.



TAX TALK

INDIAN DEVELOPMENTS

Direct Tax

Sachin Bansal pays INR6.99 billion tax on gains from Flipkart-Walmart deal: Report

[Excerpts from The Economic Times, 02 January 2019]

Flipkart co-founder Sachin Bansal has deposited INR 6.99 billion as an advance tax, including his capital gains tax from the Flipkart-Walmart deal, for Q1 FY2019, according to a report by The Times of India. His partner Binny Bansal, however, is yet to disclose capital gains made on his stake sale in the e-commerce platform, sources in the Income Tax Department told the paper. Both Bansals held more than 5% stake each in Flipkart. Earlier, the Income Tax Department had issued notices to the founders Binny and Sachin to disclose their total income from the Walmart-Flipkart deal. The department had sent notices to Flipkart's promoters as well as 35 other stakeholders.

Relief for companies facing tax outgo overvaluation premiums

[Excerpts from The Economic Times, 03 January 2019]

Companies faced with a 30% tax bill on overvaluation premiums are set to get a reprieve after a recent government clarification asked officials not to scrutinize such transactions, said people with knowledge of the matter, adding that this could also bring some relief to start-ups on the angel tax front. Many firms had received tax demands after the premiums were paid over the 'fair price' or 'fair market value' for fresh equity or preference shares. The demands could be withdrawn in the coming weeks, said the persons. A 31 December government notification has said that fresh issuance of shares at a premium, in most cases, should be outside the tax ambit.

Transfer Pricing

Time Limit for Filing of CbCR in India prescribed

The Central Board of Direct Taxes (CBDT) vide circular dated 18 December 2018 (read with CBDT circular dated 26 December 2018) has prescribed the timelines with respect to furnishing Country-by-Country Reporting (CbCR) under sub section (4) of section 286 in India as follows:

(a) Where the parent entity is not obligated to file CbCR or, (see note 1 below) (aa) Where the parent entity being a resident of a country or territory with which India does not have an agreement providing for the exchange of CbCR.	CbCR is required to be furnished within 12 months from the end of the reporting accounting year (see note 2 below)
(b) Where there has been a systemic failure of the country or territory and the same has been intimated by the prescribed authority to such constituent entity.	CbCR is required to be furnished six months from the end of the month in which said systemic failure has been intimated by the prescribed authority.

Note1: Switzerland and Hong Kong have mandatory CbCR filing requirement for accounting year commencing from 1 January 2018. Therefore, Constituent entity resident in India whose parent is in Switzerland or Hong Kong may be required to furnish CbCR in India for the reporting period say 1 January 2017 to 31 December 2017 and also 1 January 2016 to 31 December 2016.

Note 2: For all accounting years ending up to 28 February, 2018 considering the short deadline, the CBDT has extended the time limit to 31 March 2019 (refer circular dated 26 December 2018)

Indirect Tax

Advance authorization – Pre-import condition relaxed

The Government has removed the pre-import condition for imports under Advance Authorization. [Notification No. 1/2019-Central Tax dated 15 January 2019]

Key decisions in the32nd GST Council Meeting

- Approval to the levy of disaster cess on the intra-state supply of goods and services within the state of Kerala at a rate not exceeding 1% for a period not exceeding two years. The same is yet to be notified.
- Extension of the composition scheme benefits to the suppliers of services and mixed supplies. The turnover limit to qualify under the scheme has been set at INR 5 million. The applicable tax rate for such suppliers would be 6% (3% CGST and 3% SGST) without ITC benefit. The same is yet to be notified.

Amendments to GST law

The amendments in the GST Law, which were passed by the Parliament in August 2018, have been made applicable from 1 February 2019.

Clarification on exemption on supply of food by education institutions

It has been clarified that the supply of food and beverages by an educational institution to its students, faculty and staff, where the educational institution itself makes such supply, is exempt under Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017, vide Sl. No. 66 w.e.f. 1 June 2017 itself. However, such supply of food and beverages by any person other than the educational institutions based on a contractual arrangement with such institution is leviable to GST at the rate of 5%. [Circular No. 85/04/2019-GST dated 1 January 2019]

Clarification on transition of Service tax credit under GST

The CGST Act has been amended with retrospective effect to allow the transition of Central Value Added Tax (CENVAT) credit under the Central Excise and Service Tax laws, only in respect of “eligible duties.” In this regard, doubts were raised as to whether the expression “eligible duties” would include CENVAT credit of Service Tax within its scope or not. The government has now clarified as follows:

- Under tax statutes, the word “duties" is used interchangeably with the word “taxes,” and in the present context, the two words should not be read in a disharmonious manner. Therefore, CENVAT credit of Service Tax can be transitioned under GST.
- However, no transition of credit of cesses, including cess, which is collected as an additional duty of Customs, i.e., Krishi Kalyan Cess, would be allowed in accordance with the amendment to the CGST Act.

[Circular No. 87/06/2019-GST dated 2 January 2019]

GST collection for January meets target

The government’s GST collections in the month of January 2019 stood at INR 1.02 trillion. The government’s monthly target for GST revenue collection of INR 1 trillion was achieved for only the 3rd time in the current financial year.

TAX TALK
GLOBAL DEVELOPMENTS

Direct Tax

OECD and the Netherlands discuss developments in international tax co-operation

[Excerpts from oecd.org, 10 January 2019]

OECD Deputy Secretary-General Ludger Schuknecht and Pascal Saint-Amans, Director of the Centre for Tax Policy and Administration, met today in Paris with Menno Snel, State Secretary for Finance in The Netherlands, for wide-ranging discussions on international co-operation in the field of taxation, notably as concerns tackling tax evasion. Saint-Amans expressed support for ongoing tax reform in The Netherlands, welcomed recent measures adopted by the Dutch Government to combat tax Base Erosion and Profit Shifting (BEPS), and noted that speedy implementation of these measures would contribute to modernization of the international tax system. Snel underlined the importance of the multilateral approach led by the OECD. All parties agreed that international co-operation must be at the center of plans to improve international tax rules, and pledged to continue working closely on the development of effective and efficient measures.

Multinationals in Luxembourg pay lowest taxes in EU

[Excerpts from Luxembourg Times, 22 January 2019]

According to a report commissioned by the Greens in the European Parliament, multinational companies in Luxembourg pay a tax rate of only 2.2 %, far below the official rate of 29%, a study commissioned by the Greens in the European Parliament showed. The gap between the legal tax rate and the actual one is the largest of any country in the European Union, the study said. Other countries where the gap is significant are Malta (16% vs 35%), the Netherlands (10% vs 25%) and France (17% vs 33%). On the other hand, in Greece (28% to 24%) and Ireland (16% to 13%) multinationals ended up paying more than legally required. Only Bulgaria and Italy have their actual tax rates more or less in line with their statutory ones. The study, which was first reported by the Süddeutsche Zeitung and other media outlets is set to be published subsequently. Luxembourg was already subject to sharp criticism in 2014, when the so-called LuxLeaks scandal revealed tax rulings of around 300 multinational companies based in the Grand Duchy.

Transfer Pricing

Thailand provided few revisions to its proposed transfer pricing act

Thailand's National Legislative Assembly published the revisions to the draft Transfer Pricing Act (revising the first draft), proposed to be effective for accounting years starting on or after 1 January 2019. The key features of the draft TP Act are:

- Within 150 days from the closing of the accounting period, taxpayers with related parties are required to prepare reports, including descriptions of the related-party relationships and to disclose values of the related-party transactions for each fiscal year in accordance with the specified format, and submit them to the tax authority.
- The revenue threshold for taxpayers subject to the requirement is THB200 million (USD 6 million) per year (increased from THB30 million (USD 0.9 million) per year in the original draft).
- Penalties for - Failure to file the required report and/or additional documents/evidence or to submit incomplete/incorrect documents or evidence without a reasonable cause.

Lithuania introduces transfer pricing documentation requirements

The ministry of finance of the Republic of Lithuania introduced the new TP documentation requirements (implementing OECD's BEPS recommendations), applicable to related-party transactions (threshold of Euro 90,000 in the previous tax period) conducted in and after 2019. The requirements broadly relate to:

- Deadlines for preparing TP documentation - 15th day of the sixth month after the financial year end;
- Thresholds for preparation of Master File (Euro 15 million) and Local File (Euro 3 million);
- Updation in TP documentation needed every three years (annually for financial transaction);
- Within 30 days of the date of receipt of the intimation, TP documentation must be submitted to the tax administrator. A time limit may also be set for submitting TP documentation in the official language.
- Penalties for non-compliance.

United Kingdom aligns transfer pricing policies with BEPS action plan 8-10 with a 'profit diversion compliance' facility

On 10 January 2019, Her Majesty's Revenue & Customs (HMRC) announced a profit diversion compliance facility to align TP policies (primarily subject to diverted profits tax) with OECD's BEPS 8-10. The facility will provide taxpayers an opportunity to register with HMRC, six months after which they will be required to submit a report with proposed historical tax liabilities and go-forward TP arrangements.

Who is affected?

Any taxpayer demonstrating 'profit diversion' risks is affected having the following indicators:

- Contractual allocation of risk inconsistent with the control of such risk;
- Fragmentation of valuable integrated functions;
- Important regional functions (e.g., sales function) in the UK, however, profits routed to low tax jurisdiction with fewer functions,
- Profit shifting via supply chain to low substance entities with limited functionality in low tax jurisdictions,
- High value adding R&D services in the UK remunerated on a Cost Plus basis,
- Intangible transactions involving low tax jurisdictions with limited functionality.

Why should businesses consider the facility?

A full and accurate disclosure, paying those liabilities and full cooperation would prevent a new investigation into potential DPT or corporation tax liabilities matter by HMRC. This gives rise to two major benefits, notably:

- Reduced/no penalties
- Allowing businesses to quickly bring tax matters up to date.

Australia updated its compliance guideline for simplified transfer pricing record-keeping

The Australian Taxation Office (ATO) in January 2019 updated Practical Compliance Guideline (PCG) 2017/2 'Simplified transfer pricing record-keeping' options (STPRK). Key changes in the updated PCG include the following:

- Changes to the revenue thresholds for the "Small Taxpayers" from AUD 25m to AUD 50m.
- No restriction on applying for simplified transfer pricing record-keeping options even if a taxpayer has any international related party dealings with specified countries, which was previously restricted.
- Reduction in the interest rate allowed for "Low Level Inbound Loans" option from the relevant Reserve Bank of Australia indicator lending rate (currently at 6.45 %) to 3.76 % for the current year.
- Introduction of a new USD 500,000 combined threshold for taxpayers having royalties, license fees for research and development.
- Consolidation of intra-group services, management and administration services options into a "Low Value Added Intra Group Services" (LVAIGS) option. Generally, the LVAIGS option will apply to back-office activities having a cost plus 5% mark-up. Furthermore, the updated PCG introduces an additional requirement for this option, being that the LVAIGS expenses should not exceed 25 % of the pre-intra-group service charges profit of the taxpayer.

The ATO has provided a transitional period for the taxpayers currently utilizing STPRK options to apply the prior STPRK guidance for their first income year commencing on or after 1 July 2018.

Indirect Tax

UK VAT - MTD to be introduced

- The United Kingdom's revenue department, i.e., Her Majesty's Revenue and Customs (HMRC) is in the process of implementing Making Tax Digital (MTD) obligations on VAT registered businesses. Under MTD, HMRC will link its Application Program Interface (API) with the digital books of accounts of the taxpayers for ongoing and accurate projections of tax dues.
- VAT returns under MTD are expected to be made applicable to businesses from the quarter of April 2019 to June 2019.

USA – Sales tax to apply on e-commerce sellers

- In light of the Wayfair judgment of the US Supreme Court, most States have begun enacting legislation to levy sales tax on inter-state sales through online market place by remote sellers.
- The States of Alabama and Iowa became the latest additions to the list of States where market place facilitators are liable to collect and remit sales tax on behalf of third-party sellers.

Compliance Calendar

20 February 2019

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

28 February 2019

Monthly GSTR-7 for the period from October 2018 to January 2019 to be filed by persons who are required to deduct TDS under GST

7 March 2019

Payment of TDS and TCS deducted/ collected in February 2019

10 March 2019

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

11 March 2019

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

13 March 2019

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

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 revise income-tax return pertaining to AY 2017-18 and
- Filing of revise income-tax return pertaining to AY 2018-19
- 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.

UPCOMING EVENTS

SKP IN THE NEWS

"This is a significant change and would resolve funding issues for these service and trading companies which so far had to rely only on equity capital from their parent companies for funding requirements." - **Maulik Doshi**

Bloomberg Quint - 20 January 2019

Story - How New ECB Rules Change India Inc.'s Borrowing Plan

Read more at https://bit.ly/2FPre8X

"It is recommended for MNE Groups to comply with the new deadline to avoid strict penalty implications for non-compliance, especially given that there is no guarantee that the impacted jurisdictions (such as the US) would enter into a MCAA with India before March 31, 2019." - **Maulik Doshi**

TP News - 14 January 2019

Story - Indian tax authority sets new CbC reporting deadline for US subsidiaries

Read more at https://bit.ly/2QOdXj2

"India is on the brink of overhauling its tax system, implementing the BEPS project and seeing a further evolution of the GST despite this being an election year." - **Maulik Doshi, Jigar Doshi**

Business Standard - 5 January 2019

Story - What to expect on the tax front in 2019

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

Important Changes in GST Law & Practical Aspects of GST Annual Return

PHD Chamber of Commerce

New Delhi, 21 February 2019

Visit www.phdcci.in/events-detail/upcoming-events for more details

Introduction of New GST Return Format - Understanding Issues & Compliances there of

PHD Chamber of Commerce

New Delhi, 14 March 2019

Visit www.phdcci.in/events-detail/upcoming-events for more details

Tax Strategy & Technology Summit 2019

Transformation Forums

New Delhi, 19 March 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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