Tax Street

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

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WORLD TAX
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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 June 2019.

India experiences a generation of exceptional wealth on one hand and fiscal deficit and tax revenue targets on the other. As a result of this, it is expected that the government may consider exploring the possibilities of Inheritance tax to increase the tax kitty.

- The **'Focus Point'** section discusses the possibilities of witnessing announcements concerning Inheritance tax in India in the Union Budget 2019.
- Under the **'From the Judiciary'** section, we provide in brief, the key rulings on important cases, and our take on the same.
- Our **'Tax Talk'** provides key updates on the important tax-related news from India and across the globe.
- Under **'Compliance Calendar'**, we list down the important due dates with regard to direct tax, transfer pricing and indirect tax in the month.

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

Warm regards,
The SKP Team

FOCUS POINT

Inheritance tax in India – Whether this budget can have a surprise?

India's economic growth and flourishing capital markets have generated exceptional wealth for Indian promoters/ shareholders. As a result, India is generating many unicorns who possess massive wealth. At the same time India is struggling in meeting its fiscal deficit targets and the tax revenue targets.

In order to increase the tax kitty, one of the avenues could be the introduction of inheritance tax/estate duty in India. There were certain murmurs in media and unconfirmed reports that the Government of India may be evaluating the proposal of levy of inheritance tax/estate duty. If we look globally, inheritance tax is very much a reality. Countries like USA, UK, Japan, South Korea, etc have introduced inheritance tax on the value of accumulated savings of the deceased.

Currently, India does not have estate duty or inheritance tax, but it would be pertinent to note that in the past India did have estate duty. Estate duty was introduced in the Year 1953 but was abolished by the Rajiv Gandhi Government in the year 1985. Estate duty was nothing, but a tax levied on the total value of the property held by an individual calculated at the time of death. It was payable only when the property was passed on to the successors. India also had a wealth tax from 1957 to 2015. The same was abolished citing disproportionately high administration and compliance cost in implementing and collecting wealth tax. In addition to this, it was practically impossible to verify personal assets being held by Indian citizens.

India has a deep connection with the UK as most of the laws in India were formed during British rule in India. India continues to follow laws implemented during the British Colonial Rule such as the Indian Evidence Act, 1872, The Transfer of Property Act, 1882, The Indian Penal Code, 1860, etc. The origins of Income-tax Act, 1961 also stems from its predecessor i.e. the Income-tax Act, 1922 which was implemented during the end of the British Colonial Rule. Given that many Indian laws have been inspired by British laws, it would be interesting to see what the inheritance/ estate duty law in the UK is and whether India can look at adopting something similar.

United Kingdom's Inheritance Tax – Overview

- Inheritance tax is the combination of Estate Duty and Gift Tax which essentially taxes the estate of a deceased person
- Estate includes property, money and possessions
- It is not applicable in cases where the value of the estate does not exceed £3,25,000 and/ or the deceased leaves the remainder of the estate in excess of £3,25,000 to a spouse, civil partner and charity
- It is leviable at the rate of 40% on the value of the estate in excess of £3,25,000
- Typically, the person who is dealing with the estate of the deceased pays inheritance tax to UK Revenue Authorities except in cases where the estate is not enough to pay tax or where the will specifically indicate that the beneficiaries should pay from the estate inherited
- Inheritance tax may also apply in other cases such as gifts made by a person who dies within 7 years of such gifting. However, there are certain exclusions to this rule such as small gifts up to £250 to different persons in a tax year or £3,000 in aggregate in a tax year (in addition to small gifts exclusion) or gifts to bride and groom upon their marriage subject to certain limits, etc.
- Reporting of Estate to the UK Revenue Authorities is a must even if the value of the estate is below the threshold. Further, such reporting should take place in the requisite form within 12 months of the death of the person and inheritance tax, if any, should be paid within six months of the death of the said person.

Concluding Thoughts

One of the main objectives for introduction of Estate Duty/ Inheritance tax is to prevent accumulation and preservation of wealth in the hands of few people, thus reducing the economic disparity between the rich and the poor. In our view, the current focus of the government should be to increase the tax base as currently only a small percentage of the population is paying taxes in India. If additional taxes like Estate duty/inheritance tax are introduced it may increase the burden of taxes on the honest tax paying community in India whereas the tax evaders may still get away.

Even where the law is introduced, the government should ensure that it applied only to super rich. Currently, 1% of the Indians hold around 73% of the wealth . Some of the measures that the government may introduce for efficient implementation of the inheritance tax are as follows:

- The government should have a higher threshold only capturing the very high net worth individuals
- The government should completely automate the process of levy and collection of inheritance tax – there should be minimal compliance burden
- Appropriate protection should be provided for ill-liquid assets especially shares in a private corporation which is running the business
- Appropriate measures to ensure this law does not become complex and lead to additional litigation.

India being a capital deprived country encourages Non-resident Indians (NRI) to invest in India. Accordingly, it would be interesting to see what kind of regulations are devised for NRI's having assets in India and whether it may have any impact on investments in India by the NRI community.

In light of the above, it would be interesting to see whether the Government of India goes down this path or sticks to its agenda to increase the tax base to increase the tax collection. While we may have clarity on this on 5 July 2019, when Finance Minister announces the budget but in the background lot of planning has started happening on protecting assets through trust structures. We are heading for interesting times.

FROM THE JUDICIARY

Direct Tax

Whether income from sale of designs and drawings would be taxable as royalty or business income?

Whether income from rendering of testing and other services would be taxable in India although the process of testing took place outside India?

Outotec (Finland) Oy Vs. DCIT [TS-311-ITAT-2019 (Kolkata)]

Held

Taxpayer resident of Finland is engaged in the business of providing environmentally sound solutions for customers in metal processing industries. While filing tax return in India, income from sale of design and drawings and income from rendition of testing and other services was not offered to tax. Tax officer held these incomes to be taxable in India as royalty and FTS.

The tax tribunal relied on several judicial precedents and held that the designs and drawings sold by the taxpayer were in the nature of copyrighted article and not copyright itself on the premise that the designs were standard technologies and were used by the customers for their internal purposes and not for commercial exploitation. Hence, the said income constituted business income and in the absence of permanent establishment in India, the same wasn't taxable under the Act and the tax treaty.

In the case of income from rendition of testing services, the tax tribunal held that the exception covered by Article 12 (i.e. the income earned on account of FTS shall be taxable in the country in which they are performed) of the tax treaty does not apply in the instant case since the testing results were consumed within India although the process of testing was conducted outside India. What is to be seen is the place where services were availed and not the place where payment for such services was made. Hence, income from rendition of testing services was taxable in India.

SKP's Comments

This decision lays down an important principle that where only copyrighted designs are transferred without transferring copyrights in the same, the same would not be taxable as Royalty in India.

India-Finland Tax Treaty provides that services would be considered to be accruing/arising in the country in which the services are performed. Interestingly, the Tax tribunal has not considered this exception and has held that the fees is paid for the results derived from testing and not for the testing activity. Even though the testing has happened outside India, since the results are consumed in India, the same has held to be taxable in India. We believe that this interpretation may not be correct and the same may get challenged before the High Court.

Whether payments made for availing bandwidth services would be taxable as royalty?

Dy. CIT vs M/s. Reliance Jio Infocomm Ltd. [TS-305-ITAT-2019 (Mumbai)

Held

The taxpayer is an Indian entity engaged in providing telecom services in India. As per the agreement with its group company in Singapore (i.e. RJIPL) to avail bandwidth services, the taxpayer had withheld taxes on the Royalty payments made to RJIPL. Thereafter, the taxpayer appealed before the authorities that it had obtained 'standard services' from RJIPL which are not taxable as 'Royalty' but as business income. Further, the taxpayer contended that in the absence of a PE in India, the business income of RJIPL shall not be taxable and accordingly taxes are not required to be withheld on the said payments.

The tax tribunal held that the taxpayer had received only standard facilities on account of the agreement. Further, the taxpayer did not have any access to any equipment, or any process deployed by RJIPL for providing bandwidth services. Also, the infrastructure and/ or the process was always used and controlled by RJIPL. Besides, the intellectual property rights in the process was not owned or registered in the name of RJIPL, but the same was a standard commercial process which was followed by the industry at large and hence the same could not be classified as a "secret process" either. Hence, payments made by the taxpayer to RJIPL could neither be termed as royalty under the Income-tax Act, 1961 (the Act) nor under the tax treaty.

SKP's Comments

The said decision has held that bandwidth services are standard facility and hence not liable to tax as 'Royalty'.

This could be an important decision for companies in telecom sector as this decision clearly brings out that such payments are not in the nature of royalty as the taxpayer is not entitled to access the equipment or any process but only avails standard service.

Whether support and management services (development of strategies, overall management and coordination, maintaining external relationships, human resource services, etc.) would constitute fees for included services (FIS) as per India-US tax treaty?

The Nielson Company (US LLC) vs DCIT [TS-304-ITAT-2019 (Mumbai)]

Held

The taxpayer, US based company, is engaged in the business of providing customized research services and retail measurement services in India. Pursuant to a services agreement with its Indian group company (Indian entity), the taxpayer received certain consideration for providing support and management services (development of long term strategies, overall management and coordination, maintaining external relationships, human resources, tax services, management and co-ordination of IT policies, etc) which was not offered to tax in India as the same did not make available any technical knowledge or skills to the Indian entity. However, the tax officer held that these payments were FIS and hence taxable under the tax treaty.

The tax tribunal observed that the services rendered by the taxpayer were purely in the nature of support services which did not involve transfer of technology, skills, etc. Further, it was observed that aforesaid services, though may fall under consultancy or technical services, do not make available any technical expertise so that the Indian entity can apply the expertise on its own.

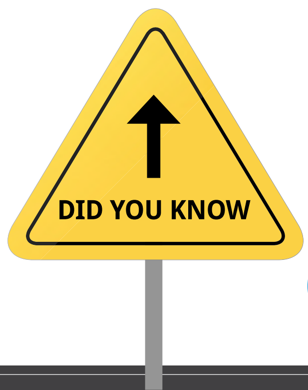
Also, the tax tribunal observed that the Technical Explanation to India-US tax treaty very categorically clarified that only those consultancy services are to be considered which are "technical" in nature for the purpose of FIS. Further, these services do not require transfer of technology, skill set to the Indian entity. In doing so, the tax tribunal placed reliance on various judicial precedents. In light of the above, the aforesaid services were not taxable in India under the tax treaty.

SKP's Comments

While commenting on whether support and management services would be considered as FIS, the tax tribunal has not only considered the relevant facts and tax treaty provisions but also the Technical Explanation to India-US tax treaty.

This has further enhanced the importance of technical explanation to a tax treaty. In doing so, it has been emphasized that consultancy services which are not technical in nature would not get covered within the ambit of "technical and consultancy" services under FIS. This finding is very liberal as it puts across a preposition that until and unless the consultancy services have technical element the same may not get covered under the definition of FIS.

Under the presumptive tax scheme, income of foreign taxpayers engaged in oil and gas sector would be taxable at an effective rate of 4.68% on gross basis. However, it would be pertinent to note that presumptive tax scheme is optional (i.e. if the foreign company believe that margins earned from India business are lower than 10%, then they can opt for net basis of taxation).



Transfer Pricing

Whether MAP (Mutual Agreement Procedure) can be applied on transactions entered into with AE and that not covered under MAP?

ANZ Operations & Technology Pvt Ltd, [IT(TP)A No.432/Bang/2012, IT(TP)A No. 483/Bang/2013, AY 2007-08 & 2008-09]

The taxpayer is engaged in providing software development and ITeS services. The taxpayer has adopted MAP resolution w.r.t. transactions undertaken with Australian related parties.

During the year under consideration, the taxpayer contended that the same percentage of profit should be applied for transactions entered into with non-Australian related parties, as admitted in MAP resolution for similar transactions with Australian related parties.

TPO rejected the aforementioned approach adopted by the taxpayer and made an adjustment.

CIT(A) upheld the adjustment made by TPO.

ITAT Ruling:

ITAT held that same basis could be applied for non-Australian related parties as has been agreed by the taxpayer in the MAP resolution for transactions with Australian entities. This was also in view of the fact that the MAP agreed for transactions with Australian related parties constituted more than 90 % of the total related party transactions entered into by the taxpayer. Thus TPO was directed to compute TP adjustment using the same rate that has been agreed as per MAP resolution. Reliance was placed on taxpayer's assessment for AY 2009-10 on similar grounds.

SKP's Comments

The transactions that are already covered and concluded by way of alternate dispute resolution mechanism (APA/MAP, etc.) could be used as a reference point, while arguing before tax authorities. Since similar issues have already been adjudicated, once the existence of similar fact pattern is proved, it can be viewed as a strong argument for defending the taxpayer's case before lower authorities.

Whether "Sogo Shosha" company can be characterized as a trader for products sourced by AEs?

Itochu India Private Ltd, [ITA 1111/2018 & Connected matters, AY 2007-08, 2008-09 & 2009-10]

The taxpayer is engaged in rendering support services in relation to facilitation and market support to its AE. The taxpayer identified potential vendors and passed on the said information to AEs, to take the final purchasing decisions. After finalizing the supplier and subsequently purchasing the goods from them, the taxpayer assisted AEs in identifying potential customers to sell the products purchased.

The taxpayer benchmarked the aforementioned facilitation services using TNMM.

The TPO, during the assessment proceedings, re-characterized the taxpayer's business model as a trader instead of a business support service provider. The TPO added the value of Free On Board (FOB) goods that are sourced by AEs to the taxpayer's cost base and proposed a mark-up thereon. The TPO rejected the TP analysis undertaken by the taxpayer and conducted a new search and identified trading companies as comparables for recommending TP adjustment.

CIT(A) held that the taxpayer was a business support service provider and stated that the FOB value of goods should not be added in the taxpayer's cost base. TP documentation and comparable companies selected by the taxpayer were accepted and TP adjustment was deleted accordingly.

ITAT Ruling:

Relying on the case of Li & Fung India Pvt Ltd, the ITAT held that the cost base of the taxpayer was enhanced artificially by the TPO. The proposed mark-up on FOB value of goods sourced by AEs was not justifiable under TNMM as defined Rule 10 B(1)(e) and thus ITAT upheld the order of CIT(A).

Thus, the High Court considered all the observations made by ITAT and upheld its order. A reference was also made to the fact that the taxpayer's determination of arm's length price has been accepted by the Assessing Officer for the subsequent assessment years. Furthermore, the High Court dismissed the Revenue's appeal holding that no substantial question of law arises in the present case.

SKP's Comments

The High Court has consistently rejected the Revenue's stand of wrongfully adding FOB value to the cost base of Sogo Shosha taxpayers. Furthermore, re-characterization of such taxpayers as a trader is also not sustainable.

Whether entity-level comparison can be made for specified domestic transactions (SDT) for inter-unit transfers?

Sheela Foams Ltd [ITA No.8155/Del/2018, AY 2014-15]

The taxpayer is engaged in the business of manufacturing and trading of PU foam products and mattresses from various units located across India. One of the units of the taxpayer was eligible for various subsidies and deduction u/s 80IC of Income Tax Act, 1961.

During the year under consideration, the taxpayer entered into an international transaction of purchase and sale of raw material, which was benchmarked using TNMM, at entity level. The taxpayer also entered into SDT of payment of interest, rent, royalty, training fees to AE in India, and inter-unit transfer of raw materials, which was benchmarked using CUP.

The benchmarking carried out w.r.t. international transactions by the taxpayer was accepted by the TPO. However the profit made by the taxpayer w.r.t SDT transactions (80IC unit) was challenged. The eligible unit of the taxpayer earned higher profit than other non-80IC units (non-eligible units). The TPO opined that the taxpayer had shifted profits to 80IC unit from non-80IC units, to claim tax benefit. Accordingly, the TPO proposed a downward TP adjustment.

The DRP analyzed the expenses allocated to the 80IC unit and directed the AO/TPO to allocate finance cost in sales/operating revenue ratio and re-compute the SDT expenses for calculating the TP adjustment. The DRP directed AO/TPO to examine the invoices pertaining to the transfer of consumables to the 80IC unit by taxpayer and state findings in the final order.

ITAT Ruling:

ITAT upheld the application of entity-level TNMM for analyzing comparability. Furthermore, computing the margin of the 80IC unit by excluding the benefit received on account of excise duty and sales tax and comparing with the average margins of the comparable companies selected by the taxpayer has been upheld.

Verification of invoices for inter-unit transfers was not warranted since TNMM was selected to determine the arm's length price of SDTs.

The ITAT directed the TPO to reduce the common/head office expenses that had been allocated to the eligible 80IC unit from the total SDT, for re-computing the TP adjustment.

To determine the quantum of interest or finance cost to be allocated to the eligible 80IC unit and take effect of the same while computing margins of the unit.

SKP's Comments

In case of inter-unit transfers, the taxpayers need to be mindful of the segmental allocation and have in place back up supporting documents to prove that the apportionment basis is reasonable. Artificial inflation of profits/losses or allocation without underlying evidence in eligible units could be closely scrutinized by tax authorities.

Whether additional profits should be attributed to foreign AE, post determining the remuneration of Indian subsidiary to be at arm's length?

Taj TV Ltd [ITA No. 1313/Mum/2018 & ITA No. 1501/Mum/2018, AY 2011-12]

The taxpayer is a tax resident of Mauritius and is engaged in the business of Telecasting of TV Channel (TEN sports).

During the year under consideration, the taxpayer undertook international transactions with its AE in India (Taj Television and Zee Entertainment Ltd) for advertising sales agency services, share of distribution services, recovery of expenses on the sale of broadcasting rights, reimbursement of expenses, and recovery of expenses and applied CUP for benchmarking distribution services.

The TPO rejected the TP analysis conducted by the taxpayer and computed TP adjustment. The TPO placed reliance on the intercompany agreement, wherein it was mentioned that Taj India had exclusive rights to represent the taxpayer before distribution systems/ cable operators and to negotiate with third parties for obtaining cable distribution license agreement. The distribution revenue collected by Taj India was shared with the taxpayer, the TPO/ AO concluded that such an arrangement created a PE in India.

Furthermore, the AO also has allowed programming cost and treated uplinking and transponder fee as royalty under Article 12 of India-US DTAA. Since no withholding was undertaken on the items mentioned above, the same were disallowed under section 40(a)(i).

CIT(A) partly upheld the order of AO and rejected the AO's claim of disallowing certain expenses by following the decision in the taxpayer's case.

ITAT Ruling:

Relying on the decision of co-ordinate bench in the taxpayer's case for earlier years, the ITAT held that the AE of the taxpayer does not constitute agency PE as per India-Mauritius DTAA. With regard to the advertisement revenue it was held that since AE (i.e., Taj India) was remunerated in line with the arm's length principle, no further income or profit can be said to be attributable to the taxpayer (relied on Supreme court ruling in the case of Morgan Stanley).

With regard to the issue of royalty, the ITAT relied on an earlier decision made in the taxpayer's case, wherein it was mentioned that the distribution income does not fall under the definition of royalty and does not amount to transfer of any right over the copyright to cable operators.

Accordingly, the AO was directed to delete the additions made towards computation of income attributable to the taxpayer in India.

SKP's Comments

While there are multiple judgments pronounced on the basis of Morgan Stanley case, it is imperative for the taxpayers to analyze its business model and ensure that the arrangement does not tantamount to existence of PE in India under the concerned DTAA.

Whether TNMM can be applied in case of distributor undertaking warehousing, marketing, quality control functions?

Videojet Technologies (I) Pvt Ltd [ITA No.6956/Mum/2012, AY 2008-09]

The taxpayer is engaged in the business of trading of coding and marking equipment, consumables, and spares thereof.

During the year under consideration, the taxpayer made import purchases from AE and sold it to third-party customers without any value addition. RPM was selected as the most appropriate method (MAM).

TPO rejected RPM as MAM stating that different accounting principles were followed by the taxpayer in the accounting of 'cost of goods sold' vis-à-vis comparable companies. TPO further stated that the gross margin earned does not reflect whether the taxpayer is appropriately remunerated for the host of functions (viz warehousing, marketing, inventory control, quality control, etc.) performed by it as per the Functional, Asset and Risk analysis. Two comparable companies were also rejected on account of product differentiation. Thus TNMM was selected as MAM and entity level margins were computed by the TPO, thereby leading to TP adjustment.

DRP upheld the order of the TPO.

ITAT Ruling:

It was established that the taxpayer imported goods from AE and sold it to third parties without any value addition. This was further substantiated with Rule 10B(1)(b) of the Income-tax rules, 1962, as a primary basis for evaluating the selection of RPM as MAM.

On perusal of the accounts of the comparable companies, it was held that the taxpayer, as well as comparable companies, followed uniform accounting norms Indian GAAP. Thus, revenue's ground of appeal was dismissed.

The taxpayer being a full-fledged distributor performed certain functions viz. warehousing, marketing, inventory-control, and quality-control. However, the said functions did not add any value to the goods sold and would ideally be performed by comparable companies undertaking distributor functions. Thus gross profit margin (using RPM as MAM) was considered for benchmarking the import purchases.

ITAT held that while selecting comparable companies under RPM, emphasis should be laid on functions performed rather than product comparability. Thus TPO was directed to include the two comparables excluded on account of product dissimilarity.

ITAT selected RPM as MAM and considered gross profit margin as the PLI for determining the ALP of import purchases.

SKP's Comments

Taxpayers undertaking distribution function need to document the FAR robustly to substantiate entity characterisation.

Once it is established that the taxpayer is a full-fledged distributor and does not perform value added functions, RPM can be selected as the MAM.

Whether profits to be attributed to Head Office constituting Branch Office as PE?

DNV GL SE-India Branch [ITA No. 3139/Mum/2018, AY 2011-12]

The taxpayer (Head Office – HO) is a tax resident of Germany and is engaged in the business of inspection and certification services in Marine Industries.

The taxpayer selected CUP as the most appropriate method to determine the ALP of the international transactions. TPO rejected CUP as MAM and computed upward TP adjustment.

Furthermore, the AO made an addition for HO's share of invoice raised by the branch office in India (BO) and BO's share of invoice raised by HO.

AO regarded branch office as service PE of the taxpayer becuase all the services were being rendered by a branch office and no specific work was carried out by the taxpayer for which the branch was liable to pay to the HO. Thus addition was made to the extent of the taxpayers share of income sourced in India.

In the absence of using any of the prescribed methods for computing upward TP adjustment, the same was deleted by CIT(A). Addition made on account of taxpayer's share of income earned in India was also deleted.

ITAT Ruling:

As per Indo-German DTAA, business profits of permanent establishment in India should only be offered to tax in India. Accordingly, the taxpayer's share of income earned in India would be taxed in its country of residence i.e., Germany. Thus no profits were attributed to the taxpayer in India. The ITAT drew reference to the taxpayer's own case in earlier years, wherein similar facts arose and the amount attributed by the BO to the HO was accepted by the co-ordinate bench of the Tribunal and the adjustment proposed was deleted.

With regard to the TP adjustment proposed, the Tribunal accepted the taxpayer's reliance on Supreme Court judgment in Morgan Stanley[1] case, wherein it was held that once the overall attribution and taxability for HO & BO are accepted, TP analysis would not yield any further result. Thus the adjustment proposed by Revenue was deleted by the Tribunal, and the CIT(A)'s view was upheld.

SKP's Comments

The taxpayers operating in an HO – BO model are recommended to have in place supporting documents to bifurcate the transactions (cost and revenue) pertaining to respective entity's operations. Furthermore, taxability of such transactions under the DTAA framework need to be closely evaluated.

Indirect Tax

Whether GST registration is required in states in which imports are made, even if no supply is made from such states?

M/s Gandhar Oil Refinery (India) Limited - Authority of Advance Ruling (AAR), Maharashtra [2019 (6) TMI 1010]

Facts

- The applicant had VAT registrations in various states in which it imported coal.
- At the time of implementation of GST, the applicant received provisional GST ID in all states where it had VAT registration, and therefore applied for GSTIN in all such states.

Applicant's Contentions

- Section 11 of the IGST Act, 2017 states that the Place of Supply (POS) in case of import of goods shall be the location of the importer.
- Therefore, the POS is in the state of Maharashtra as the agreement, commercial invoice, bill of lading is with the head office (HO) in Mumbai, Maharashtra.
- The company only has a liaison office in other states. Therefore, when the imported goods are sold by the company, it should be considered as supplies from Maharashtra.

The AAR agreeing with the contentions of the applicant held as follows:

- The applicant is situated in Maharashtra and hence will clear the imported goods by paying IGST from the GSTIN issued in Maharashtra.
- Furthermore, even if the applicant has godowns in different states, it can clear the goods on the basis of invoices issued by the Mumbai HO on payment of IGST in the state of Maharashtra.
- Thus, the applicant is not required to have separate registration in each state.

SKP's Comments

Under the GST law, a supplier is required to obtain registration in the state from which the taxable supply is made. Furthermore, 'place of business' includes a warehouse, godown, etc., where goods are stored. In view of this, the ruling by AAR not requiring the applicant to obtain GST registration in states where the goods are stored and sold from the godown is likely to be challenged by the Revenue authorities.

Whether a business engaged exclusively in supplying exempt supplies liable to obtain registration if it is liable to tax under reverse charge mechanism (RCM)?

[Background: Section 23 of the CGST Act ('the Act') - Any person engaged exclusively in the business of supplying goods that are wholly exempt from tax is not required to obtain registration under Section 23 of the CGST Act.

Notification No. 13/2017 - Central Tax (Rate)

GTA services are liable to RCM.

Section 24 of the Act - A person liable to pay tax under RCM has to obtain registration compulsorily.]

M/s. Jalaram Feeds - AAR, Maharashtra [2019 (6) TMI 1063]

- It is engaged exclusively in supplying exempt supplies and hence is not required to obtain registration in accordance with section 23 of the Act.
- Most persons engaged in the supply of exempted goods and services require services on which tax is payable under RCM [goods transport agency (GTA) services in this case]. Hence, there would be no need of section 23 of the Act as everyone would be covered under section 24.
- Section 23 of the Act is standalone section and provisions of Section 24 pertaining to compulsory registration are applicable only to a person liable for registration under Section 22(1).

The AAR disagreed with the contentions of the applicant and held that:

- The argument of the applicant makes Section 24 of the Act redundant.
- It is a well-settled principle of law that it should not be interpreted in such a way to make any part of the statute redundant.
- Therefore, the applicant would go out of the scope of Section 23 as it is availing GTA services, which are liable to tax under RCM.
- The applicant would fall within the scope of section 24 and hence, would be required to obtain registration under the Act.

SKP's Comments

In view of this advance ruling, businesses which are otherwise not required to obtain registration under GST should evaluate the implications in light of Section 24 of the Act, which provides for situations wherein a person is compulsorily required to obtain registration.

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[1] Civil Appeal No. 2914 of 2007 (arising out of S.L.P. (C) No. 12907 of 2006) and Civil Appeal No. 2915 of 2007 (arising out of S.L.P. (C) No. 16163 of 2006).

TAX TALK
INDIAN DEVELOPMENTS

Direct Tax

Curbing black money: Tax on cash withdrawals and estate tax on inherited property

The Narendra Modi government in its second term will put in place measures to further curb black money generation. The policymakers seem to have started considering possibility of re-introducing the much-flayed instrument of the banking cash transaction tax (BCTT) to discourage cash transactions.

This move of the government is seen as a measure to discourage the use of paper currency, crack down on black money and promote use of digital payments for all manners of transaction.

Further, the tax authorities are considering levying the estate tax on inherited property in line with global practices. The objective behind its reintroduction is said to bring an equilibrium in distribution of wealth and controlling the unfettered inheritance and boosting the tax revenue. Clarity on this aspect is expected on the upcoming budget.

India notifies tax info exchange pact with Marshall Islands

The tax information exchange agreement (TIEA) was signed on 18 March 2016 with Marshall Islands. The TIEA has been notified by India on 21 May 2019. The agreement enables exchange of information, including banking and ownership information, between the two countries for tax purposes. Additionally, representatives of one country may undertake tax examinations in the other country. The said agreement will enhance mutual cooperation between India and the Marshall Islands by providing an effective framework for exchange of information on tax matters which will help curb tax evasion and tax avoidance.

New income tax rules: No escape just by paying penalty

Tightening the screw on tax evaders, the revised guidelines issued by the Income Tax (I-T) Department have made serious offences under black money and benami laws "generally" non-compoundable. This means that a person or entity would not be able to settle a case of tax evasion by just paying the tax demand, penalty and interest. The new guidelines apply to all cases for compounding received on or after this date. The Central Board of Direct Taxes (CBDT) has listed 13 cases, where the offences are not to be generally compounded, and has directed its senior officers to circulate the revised guidelines for compliance by concerned authorities. Offences forming category 'A' include failure to pay tax deducted / collected at source under Chapter XVII-B or failure to pay dividend distribution tax.

Budget 2019: Modi Govt. may extend tax reliefs to SEZs to attract companies fleeing to China

The finance ministry is considering extension of the tax reliefs for the special economic zones (SEZs) in the coming budget in a bid to attract companies fleeing China to avoid adverse impact of the trade war with the US. The Budget 2016 had laid out a sunset clause for these exemptions as per which firms can sign in for the SEZ scheme only till 31 March 2020. The government has been considering extending the scheme by another five years or so.

Indirect Tax

Decisions in the 35th GST Council meeting

Extension in due date of GST compliances

Particulars	Period	Revised due date
Annual Return - GSTR-9	Financial year 2017-18	31 Aug 2019
Audit - GSTR-9C	Financial year 2017-18	31 Aug 2019
GST ITC - 04	July 2017 to June 2019	31 Aug 2019

Blocking of e-way bill for non-compliant businesses postponed

[Notification No. 25/2019 - Central Tax]

The applicability of Rule 138E of the CGST Rules, which blocks the functionality of generating e-way bills for businesses that do not file GST returns for two consecutive tax periods has been postponed to 21 August 2019.

In-principle approval to electronic invoicing

The e-invoicing system, which will allow generating invoices on the GST common portal has been approved in-principle by the GST Council. The e-invoice will also act as the e-way bill, and further would be auto-populated as the outward supplies of the business in the GST returns. The Phase I requiring e-invoicing of B2B invoices is proposed to be rolled out voluntarily from 1 January 2020.

Tenure of NAA extended by two years

The tenure of the National Anti-Profiteering Authority (NAA) has been extended by two years. Furthermore, the Council has also approved levying a penalty of up to 20% in case of non-deposit of the profiteered amount by the business.

GST rates on electric vehicles

The proposal for reduction of GST rates on the sale of electric vehicles, electric chargers for such vehicles, and the leasing of electric vehicles has been sent to the Fitment Committee for their consideration. The Committee will deliberate on the issue and submit its recommendation to the GST Council.

Approval to transition plan to new GST return filing

The GST Council in its 31st meeting had approved the new return filing system. Now, the Council in its 35th meeting has recommended its implementation in a phased manner as follows:

<table>
<tr><th>Period</th><th>Taxpayer type</th><th>Action point</th></tr>
<tr><td rowspan="3">For October and November 2019</td><td>Small taxpayers (annual turnover of up to 50 million)</td><td>Stop filing monthly GSTR-3B and pay tax vide PMT-08</td></tr>
<tr><td>Large taxpayers (annual turnover of more than 50 million)</td><td>Start filing ANX-1 from October 2019 and stop filing monthly GSTR-1</td></tr>
<tr><td colspan="2">FORM GST ANX-2 would not be required to be filed. However, it can be viewed by the taxpayer without allowing any changes.</td></tr>
<tr><td rowspan="2">For October and November 2019</td><td>Small taxpayers</td><td>File ANX-1, ANX-2, and RET-1 for the period October 2019 to December 2019</td></tr>
<tr><td>Large taxpayers</td><td>File ANX-1, ANX-2, and RET-1 from January 2020</td></tr>
</table>

TAX TALK
GLOBAL DEVELOPMENTS

Direct Tax

France stresses Facebook to issue its own virtual currency (cryptocurrency) backed by guarantees

The Finance Minister of France opined that Facebook could issue its own digital money, provided Facebook can provide strong guarantees for it. Further, the Finance Minister also opined that such digital money cannot become the currency i.e. cannot replace sovereign currency of France. This is because, the sovereignty must remain with the respective countries and not private corporations which in turn respond to private interests. The objective behind guarantees backing digital money is to ensure that such digital money is not misused, for instance, for financing terror activities or illegal activities, etc.

Tax information sharing results in 25% drop in International Financial Centres (IFC) bank deposits

Automatic exchange of information of financial accounts has witnessed a massive drop of investments in 46 IFCs in the form of bank deposits as per a recent study undertaken by OECD. Besides, reduction in off-shore bank deposits, this automatic exchange of information is promoting tax compliance while reducing off-shore hidden wealth. In addition to this, the OECD, very categorically remarked that the international tax community has brought about an unprecedented level of transparency in tax matters, thus bringing huge government revenues and services in the near as well as distant future. Further, OECD has observed that approximately 46 key IFCs have been considered while undertaking this study/ survey, some of which include Bahamas, Cyprus, Cayman Islands, Hong Kong, Jersey, Luxembourg, British Virgin Islands, Marshall Islands, Mauritius, Panama, Singapore, UAE, etc.

G20 Meeting on digital economy tax proposal in Japan

Recently, the G20 Ministers met in Japan to wrap up tax rules on digital economy by the Year 2020. These tax rules would be nothing but a compilation of common rules to close loopholes used by global tech giants such as GAFA (Google, Amazon, Facebook and Apple) to reduce their corporate taxes by shifting profits to no/ low tax jurisdictions.

Over the years, GAFA and other large multinational enterprises have been reducing their tax bills to a great extent by booking their profits in low/ no tax jurisdictions irrespective of the location where the services are finally being consumed, hence, the new tax rules. The new rules would mean higher tax burdens for large multinational enterprises and at the same time make it difficult for low tax countries like Ireland to attract foreign direct investments.

Transfer Pricing

Singapore: IRAS publishes Transfer Pricing Guidelines for commodity marketing and trading activity[1]

On 24 May 2019 the Inland Revenue Authority of Singapore (IRAS) published transfer pricing guidelines on commodity marketing and trading activities. The e-tax guide provides guidance on the analysis of the economic value of commodity marketing and trading activities, whereby the taxpayers are required to assess their contribution to the commodity MNE broader value chain. These guidelines would assist taxpayers who are engaged in commodity marketing and/or trading operations in Singapore, to ensure they comply with arm's length principle with respect to their related party transactions.

The guidelines introduced by IRAS cover four broad levels of participation that commodity marketing/trading entities may undertake viz service provider, agent, distributor and full risk-taking entrepreneur. IRAS also provides the various levels of activities, mentioning the key functions that each category of participation may perform and the risk arising therefrom.

The areas covered by the recently introduced guidelines include –

i. Commercial objectives of commodity marketing/trading entities, including commercial considerations in setting up commodity marketing/trading entities in Singapore

ii. Transfer pricing for commodity marketing/trading activities, which highlight the process for comparability and functional analysis as well as transfer pricing methods and arm's length results of related party commodity transactions

iii. Transfer pricing documentation requirement

iv. Avoiding and resolving transfer pricing dispute.

The commodity marketing/trading entity resident in Singapore shall be liable for a fine of SGD 10,000 if it fails to maintain TP documentation in line with the requirements outlined in the guidelines. To gain certainty on the arm's length nature of the transaction the entities engaged into commodity marketing/trading also have options to apply for mutual agreement procedure (MAP) and advance pricing agreement (APA).

Cyprus: Draft new TP law on intra-group financing

In order to be in line with the best international practice and avoid accusations for erosion of tax base of other countries a draft bill for the tax treatment of intra-group financing transactions has been sent for approval. The new legislation focuses on avoiding the phenomenon of transferring profits to countries with lower tax rates and covers all types of transactions whose costs are over Euro 750 thousand per year.

Since Cyprus is a low tax jurisdiction (with a corporate tax rate of 12.5%), it is important to have in place regulations and documentation for justifying to relevant tax authorities that the transactions undertaken by entities based in Cyprus are in line with the standards of intra-group arrangements defined as per OECD's guidelines.

Mauritius: Penalty provisions introduced for non-compliance with country-by-country regulations[2]

The Mauritius government on 4 May 2019 enacted new penalty provisions for non-compliance with the country-by-country regulations, as mentioned below:

Particulars	Penalty
Non-compliance with the country-by-country reporting regulations	Not exceeding MUR 5,000 (approx. EUR 127 or USD 141) and imprisonment of a term not exceeding six months
Additional penalty if the failure persists after the first penalty being introduced	MUR 10,000 (approx. EUR 254 or USD 281) per month or part of the month till the failure continues, subject to max MUR 120,000 (approx. EUR 3,045 or USD 3,376)
Providing inaccurate information deliberately	Not exceeding MUR 50,000 (approx. EUR 1,269 or USD 1,047)

The Mauritius Revenue Authority can claim penalty for non-compliance with the regulations within 12 months from the date on which the entity becomes liable for penalty. In case of providing inaccurate information the time limit is within 12 months from the date that the Mauritius Revenue Authority first become aware of the inaccuracy, but no later than three years from the date on which the entity becomes liable to the penalty. The aggrieved entity may object to the penalty with the Assessment Review Committee within 28 days of the date of the claim.

[1] https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax_Guides/etaxguide_CIT_Commodity%20activities.pdf

[2] http://www.mra.mu/download/GNno86of2019CBCRamendmentRegulations2019.pdf

Panama: Introduction to the Country-by-country reporting regulations and changes in reporting of related party transactions

On 27 May 2019 Panama issued Decree no. 46 to introduce CbCR requirements. As per Article 2 of the Decree, the ultimate parent company of the multinational group, being a tax resident in Panama with consolidated income exceeding Euro 750 million or its equivalent in Balboas (at the exchange rate on 1 January 2015) during the fiscal period immediately preceding the reporting fiscal period are required to comply with the said regulations. Starting with fiscal year 2018, the CbC report is to be submitted annually (in XML schema) within 12 months following the closing date of the corresponding fiscal period.

Furthermore, Panamanian entities belonging to foreign multinational entities would be required to submit notification to the DGI specifying the identity and tax residence of the reporting entity. As per the OECD, Panama has signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-country Reports (MCAA) on 24 January 2019, which enable the exchange of information between the countries.

Transfer Pricing report for related party transactions:

All Panamanian countries having related party transactions during the year are required to file transfer pricing information return in Form F930 within six months from the fiscal year end. Revised version of F930 has been circulated to include information as follows –

- Detailed business and financial information about comparable companies selected for transfer pricing analysis
- Detailed information pertaining to intangibles
- Adjustments relating to arm's length
- Comparability adjustments
- Information regarding transfer pricing disputes globally
- Consolidated revenue of the multinational group.

In addition to filing the transfer pricing statement in F930, the Panamanian tax authorities also require entities to have contemporaneous supporting transfer pricing documentation.

Zimbabwe: Introduces digital economy tax, transfer pricing compliance requirements

[Excerpts from online edition of Bloomberg Tax]

With effect from 1 January 2019, the Ministry of Finance and Economic Development introduced digital economy tax for income exceeding USD 500,000 in any year of assessment, by foreign satellite broadcasters or e-commerce platforms from local residents with services from offshore sources. This income shall be deemed to be earned by such non-resident service providers from a source within Zimbabwe and is liable to income tax @ 5%.

Reference has been made to Action 1 of the OECD/G20 Base erosion profit shifting (BEPS) plan, for implementing the digital economy tax in Zimbabwe.

Transfer pricing regulations and penalties

With effect from 1 January 2019, Zimbabwe taxpayers are required to file annual transfer pricing returns to the Commissioner, reflecting the transactions entered between controlled and/or associated enterprises in the prescribed form.

The newly introduced penalty provisions are as below:

Particulars	Penalty
Noncompliance is due to fraud or tax evasion leading to transfer pricing adjustment	100% penalty on shortfall
Contemporaneous transfer pricing documentation does not exist	30% penalty on shortfall
Transfer pricing documentation complies with the new Zimbabwe transfer pricing regulations	10% penalty on shortfall

China: 10th Advance Pricing Arrangement Annual Report 2018 published

The 10th Advance Pricing Arrangement (APA) Annual Report 2018 was published by the State Taxation Administration (STA) of China, which describes the regulations, procedures, latest statistics, and implementation status of the APA program in China. In 2018, China has signed two unilateral APAs (including one renewal), and seven bilateral APAs (including one renewal) which total to 89 unilateral APAs and 67 bilateral APAs through the end of year 2018.

It has been observed that the APA requests are on a rise due to uncertainty from the universal implementation of BEPS project and tax scrutiny by tax administrations. The STA is considering prioritizing the APA applications basis the innovative application of transfer pricing method or high-quality quantitative analyses of value chain analysis, intangible and location specific analysis on cost savings, and market premium.

By the end of 2018, China has signed 44 bilateral APAs with Asian countries, 16 with European countries and 7 with the North America countries. The transactional net margin method (TNMM) was the most commonly used method in executed APAs and the common transaction type was related party buy-and-sell transactions (65%) followed by services (20%) and transfer of the right to use or ownership of intangibles (15%). The APA's signed were majorly related to the general manufacturing.

Indirect Tax

US sales tax - States slow in enforcing compliance by remote sellers

[Excerpts from online edition of Bloomberg Tax]

The US states have so far been treading softly in enforcing compliance since the US Supreme Court's decision in June 2018, which brought out-of-state online sellers within the ambit of state sales taxes. The States have instead focused on campaigning to encourage remote sellers into compliance.

Compliance Calendar

7 July 2019

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

10 July 2019

- Due date for issuing quarterly TDS certificates in respect of salary paid and tax deducted has been extended from 15 June 2019 to 10 July 2019
- GSTR-8 for the month of June 2019 to be filed by taxpayers required to collect tax at source (TCS)

11 July 2019

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

13 July 2019

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

15 July 2019

- Filing of TCS statement for the period from April to June 2019
- Quarterly TCS Return deposited for the quarter ending 30 June 2019

18 July 2019

- FORM GST CMP-08 for composition taxpayers required to pay GST for the period April 2019 to June 2019

20 July 2019

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

30 July 2019

- Quarterly TCS Certificate in respect of tax collected by any person for the quarter ending 30 June 2019
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA for the month of June 2019
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB for the month of June 2019

31 July 2019

- Filing of TDS statement for the period from April to June 2019
- Filing of return of income for non-corporate assessees who are not required to be audited for financial year 2018-19
- Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the previous year 2018-19 and of foreign tax deducted or paid on such income in Form no. 67 If taxpayer is required to submit return of income on or before 31 July 2019
- GSTR-1 for the period of April 2019 to June 2019 to be filed by registered taxpayers with an annual aggregate turnover of up to INR 15 million
- FORM GST CMP-02 for service providers opting for composition scheme

Optional

- Begin uploading invoices in FORM GST ANX-1 on a voluntary basis for gaining familiarity to new return filing process

UPCOMING EVENTS

Location	Date	Time	Partner
Mumbai	5 July 2019	5:00 pm to 7:00 pm	Indo-French Chamber of Commerce
Mumbai	8 July 2019	8:00 am to 11:00 am	European Business Group
Mumbai	8 July 2019	3:00 pm to 5:00 pm	Federation of Indian Export Organisations
Mumbai	9 July 2019	4:00 pm to 7:00 pm	Indian Electrical And Electronic Manufacturer Association
Gurugram	8 July 2019	4:30 pm to 8:00 pm	SKP Organized
Pune	8 July 2019	8:00 am to 11:00 am	Indo German Chamber Of Commerce
Pune	10 July 2019	8:00 am to 11:00 am	Indo American Chamber of Commerce
Pune	12 July 2019	4:00 pm to 7:00 pm	World Trade Center

Webinar
5 July 2019 | 5:00 pm to 6:00 pm

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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.

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