Nangia Andersen LLP

NEWSLETTER

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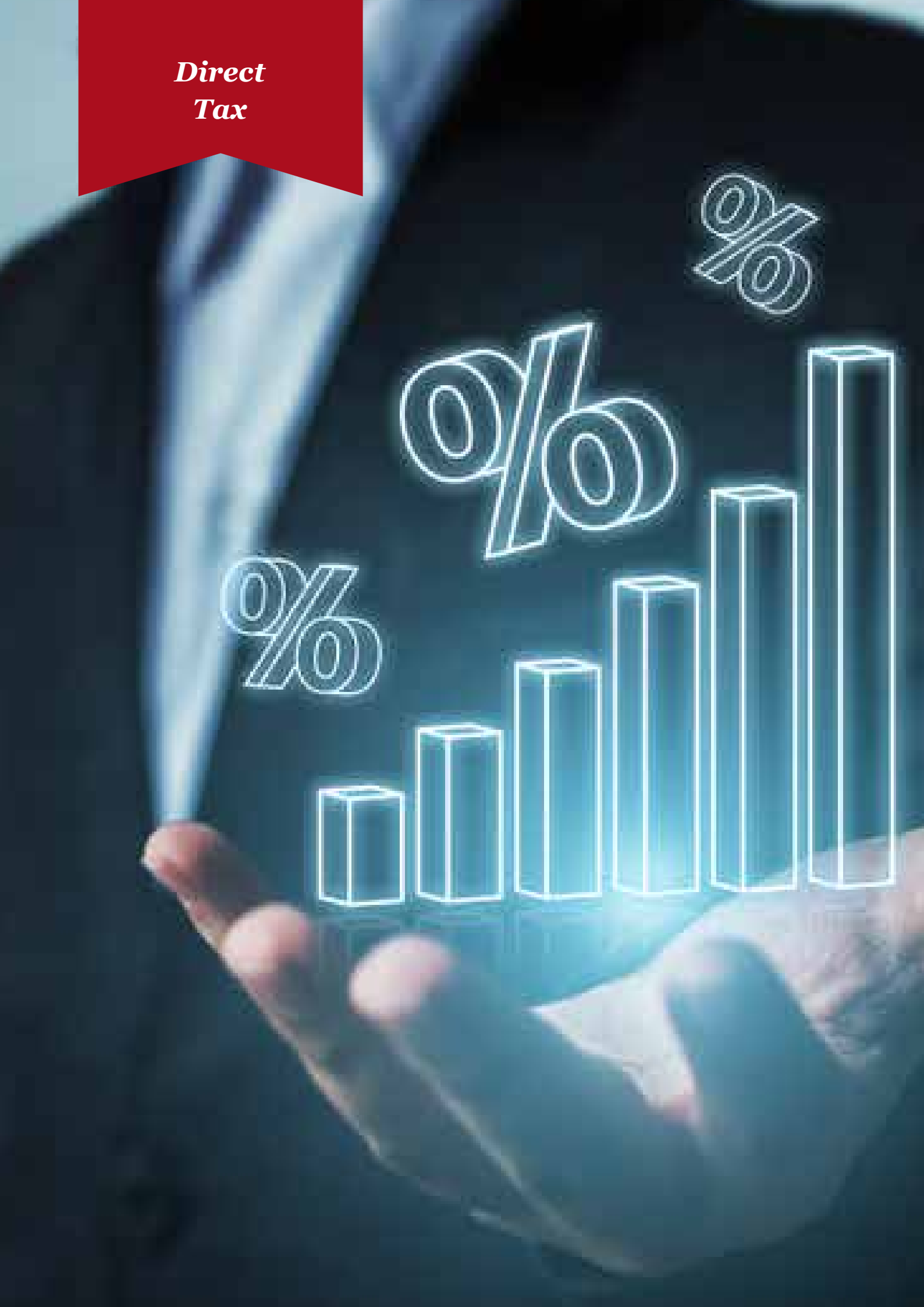
What's Inside?

Direct Tax



1. ITAT: IT services rendered in pursuance of royalty agreement, taxable in India; MFN clause benefit inapplicable

Outcome : In favor of revenue

Issue : Royalty, FTS, MFN clause

Background

The Income Tax Appellate Tribunal, Mumbai (ITAT) ruled that the IT services rendered by the Aktiebolaget SKF (assessee) in pursuance of the main royalty agreement was taxable in India as Fee for Technical services (FTS) as per the provisions of the Income Tax Act, 1961 (Act) as well as the India- Sweden tax treaty (tax treaty) since IT services rendered by assessee were subservient to royalty agreement and were ancillary and subsidiary to main royalty agreement entered into by both parties and hence, IT service agreement could not be construed as a separate and distinct agreement from main royalty agreement.

Brief facts and contentions

- Assessee, a Swedish company, entered into agreement with its Associated Enterprises (AEs) in relation to technology License agreement, Trademark License agreement and IT service delivery agreement. It excluded fee received for IT related services and training and support services from scope of taxation (earlier offered to tax) by way of a revised return of income on the ground that said income was in the nature of reimbursement of expenses and hence, not liable to tax in India.

  During scrutiny assessment, the Assessing Officer (AO) made the following observations :

  - The erstwhile two contracts of assessee were subsequently broken into three contracts but there was no change in the nature of functions and risks of the assessee with respect to the services rendered to its AEs and such income was being offered to tax during previous years
  - Receipts from IT related services had reduced during the year under consideration and hence, assessee was making available technical knowledge, skill etc. to the AEs, which resulted in fall of expenses. Hence, the services were in the nature of FTS, which made available technical knowledge/ experience/skill or process
  - The services were rendered in pursuance of royalty agreement and required application of mainframe and non-mainframe computer servers and communication devices. The services rendered were in the nature of scientific, commercial and industrial knowledge and experience and in order to access the information, the AEs were required to have compatible systems/software installed in their premises and hence, were construed as FTS by AO
- The Dispute Resolution Panel (DRP) ruled in favor of revenue and consequently, assessee preferred an appeal before the ITAT

ITAT's Judgement

ITAT ruled that IT related services rendered by the assessee to its AEs were taxable in India as FTS as per the Act and tax treaty. Key observations are as follows :

- Perusing the terms of agreements between the parties, it was apparent that the required technology and up-gradation were to be transmitted through IT infrastructure and for the same, assessee had an elaborate computer network setup for its group through which the technical information was being transmitted
- Moreover, it was noted that the assessee would disclose and make available to the AE, any modification or improvement of the technology intangibles developed by the assessee and same would be included under the scope of the Agreement and would become part of the technology intangible, as defined without an increase in license fee. Further, AEs were required to manufacture the products and operate business in accordance with the technology intangibles and instructions provided by the assessee

- With respect to assessee's contention that the extent of software formed a small portion of the overall quantum of services and accordingly, it could not be considered as a part of integrated services, ITAT opined that the services rendered in the IT segment or the services connected with training were integrally linked with the royalty agreement entered into by the assessee with its AE and both were inseparable
- Hence, it was opined that the IT service agreement was subservient and ancillary to the main royalty agreement and was same attracted taxation in India in view of the provisions of the Act and the tax treaty
- Regarding the applicability of Most Favored Nation (MFN) clause, ITAT considered the definition of FTS as stipulated under India-Portugal tax treaty and India-USA tax treaty and opined that both these treaties contain two limbs for taxation of FTS and before applying the second limb, the assessee has to exhaust the first limb. In the instant case, the services formed part of the first limb (being subsidiary and ancillary to the royalty agreement) and were encompasses in the first limb, making second limb inapplicable and services taxable in India

Nangia Andersen LLP's Take

As the new facets of issues pertaining to taxation of royalty and FTS income continue to unravel, this ruling is yet another insightful addition to the pile. The ITAT has laid down that if services rendered by assessee are subservient and ancillary to main royalty agreement entered into by both parties and both the agreements are inseparable, the service agreement shall not be treated as separate and distinct agreement from main royalty agreement and hence, would attract taxation in India. This ruling has also revealed a different aspect of applicability of MFN clause.

Past precedents on the issue

- In a recent decision[1], delivered by Mumbai ITAT, management fees received by US Co. (assessee) from its Indian counterpart was held as not taxable as FTS under Article 12(4) of the India-USA tax treaty, and it was observed that the services rendered by the assessee entailed provision of support services in advising the entities globally on policies and standards based on international best practices support in terms of IT, financial functions, and other business support services. Moreover, the services in question were independent services on standalone basis, and in the absence of 'make available' condition, Article 12(4)(a) was rendered inapplicable.
- However, in the instant case, the IT related services were subservient and ancillary to main royalty agreement and were crucial to the rendering of services to the AEs, making it an inseparable agreement. Transmission of information under the royalty agreement entailed use of mainframe systems which required IT support services to be rendered from time to time, make it a vital part of main royalty agreement

Source: Aktiebolaget SKF v. DCIT [(2020) 114 taxmann.com 734 (Mumbai-Trib.)]

[1]Kelly Services Inc [TS-832-ITAT-2019(Mum)]

2. ITAT: FTS received by a Philippine based company not taxable in India

Outcome : In favor of assessee

Category : Fee for Technical Services (FTS)

Background

The Income Tax Appellate Tribunal, Visakhapatnam (ITAT) ruled that income received by Paramina Earth Technologies Inc (assessee), being in the nature of Fee for Technical Services (FTS), would not be taxable in India in the absence of separate provisions in respect of taxation of FTS in the India- Philippines tax treaty (tax treaty). Moreover, the taxation of the said receipts as business profits was denied since the assessee did not have any Permanent Establishment (PE) in India

Brief facts and contentions

- Assessee, a foreign company having expertise in mining activity, was engaged by TCL to recruit skilled and experienced employees for mining, at mines situated at Rajasthan and received retainer fee from TCL towards rendition of such recruitment services
- The assessee claimed that all the services with respect to identifying the persons suitable for employment by TCL were performed in Philippines and the payments with respect to services rendered were received in Philippines. Moreover, the persons identified officially were not the employees of the assessee but were subject to the supervision and control of TCL and their services could also be terminated by TCL. Further, their entire salaries were also borne by TCL.
- It was contended that the assessee did not have PE in India and therefore, amount received by assessee for manpower recruitment services should not be brought to tax as business income as per Article 7 of the tax treaty. Further, in the absence of a separate article for FTS in the tax treaty, the retainer fees received by assessee for services rendered to TCL in Philippines should not be brought to tax in India as FTS under section 9(1)(vii) of the Act.
- The Assessing Officer (AO) observed that the assessee initially deducted tax u/s 195 after grossing up of tax @21.115% on remittances made to assessee by TCL and later on revised TDS return. Further, the AO opined that the case law1 relied upon by the assessee was distinguishable since in that case, the work was carried out in Philippines and no employees of IBM Philippines had travelled to India to perform any of the functions and there was no PE of IBM Philippines in India
- Placing reliance on the case of TVS Electronics and CBDT Circular2, the AO noted that payments made by TCL to assessee were to be treated as FTS and taxable u/s 9(1)(vii) of the Act in the hands of assessee
- Aggrieved by the decision of commissioner of Income Tax (Appeals), assessee preferred an appeal before the ITAT

[1]IBM India (P.) Ltd. v. Dy. DIT International Taxation (IT) Appeal Nos. 489 to 498 Bang of 2013 dated 24-1-2014

[2]Decision of Dy. CIT v. TVS Electronics Ltd. [2012] 22 taxmann.com 215 (Chennai Tribunal) and CBDT Circular No. 333 [F.No.506/42/81-FTD] dated 2-4-1982

ITAT's Judgement

- The ITAT ruled that retainer fee received by assessee from TCL towards rendition of manpower recruitment services would not be taxable in India as FTS. Key observations are as follows :
- Section 9(1)(vii) is relevant for the payments made by the non-resident, but not the resident. In the instant case, the payment was made by the resident to non-resident, therefore, the CIT(A) misunderstood the provisions of section 9(1)(vii)(c). Further, the circular2 was related to computation of income, but not the classification of income. Hence, the circular also cannot help assess FTS as separate source of income.
- Referring to the provisions of the tax treaty and relying upon the case of IBM India (P.) Ltd1, it was opined that in the absence of express provisions to tax FTS in DTAA, the same shall be taxable as business profits under Article 7 of the tax treaty, provided there exists a PE in the contracting state.
- The ITAT outlined that in the case of ABB FZ-LLC[3], it was held that the absence of the provision in the DTAA is not an omission but is a deliberate mutual agreement between the contracting states not to recognize/classify any income as Fees for Technical Services for taxation. Once the income chargeable to tax as per the tax treaty have been categorized by excluding FTS, then the scope of taxing the said income could not be expanded by importing the said provision from the Act
- It was noted that, in the instant case, the payment was required to be taxed as business profits under Article 7 of the tax treaty, and in the absence of PE of assessee in India, same could not be brought to tax in India

Nangia Andersen LLP's Take

This ruling is a fair enunciation of the fact that in the event of no separate provision in the tax treaty to tax FTS, income would be taxed as business profits in accordance with Article 7 of tax treaty but, in absence to PE in India, same could not be taxed in India as business profits. The court has fairly followed the past tradition of according the benefit of more beneficial provisions- either the tax treaty provisions or the Act provisions, as applicable to the assessee.

Past precedents on the issue

On Similar lines, in a recent decision[4], the Bangalore Tribunal ruled in favor of the assessee wherein payments made by assessee to a Philippines based company towards rendition of game moderation services, being in the nature of FTS, were held to be non-taxable in India in the absence of PE of assessee in India.

Source: Paramina Earth Technologies Inc v. DCIT [116 taxmann.com 347 (Visakhapatnam - Trib.) (2020)]

[3]ABB FZ - LLC v. ITO (International Taxation) [2016] 75 taxmann.com 83/ [2017] 162 ITD 89 (Bang - Trib)

[4]Zynga Game Networks India (P.) Ltd. v. ACIT [(2018) 97 taxmann.com 44 (Bangalore - Trib.)]

3. SC: Activities performed by the UAE based entity from a fixed place of business in India, not taxable in India

Outcome : In favor of assessee

Issue : Permanent Establishment

Background

The Hon'ble Supreme Court (SC) ruled that activities performed by the Liaison Office (LO), set-up by U.A.E. Exchange Centre (assessee) in India were 'preparatory and auxiliary' in nature. Further, the assessee's Liaison Office (LO) in India did not constitute a Permanent Establishment (PE), in view of Article 5 of the India- UAE Tax Treaty (DTAA). It opined that the transactions were concluded in UAE and the consideration for said transactions was also received in UAE and LO did not contribute in profit making objective of the assessee.

Brief facts and contentions

- The assessee, a UAE based entity, was offering remittance services for transfer of monies from UAE to various places in India. In order to facilitate the said purpose, it had opened LO in India under a license granted by the RBI.
- In pursuance of the contracts entered into between the NRI remitters and the assessee, NRIs handed over their funds to the assessee at any of its centers or outlets in UAE, which were transmitted to the beneficiaries of the NRI remitters in India, either by telegraphic transfer through normal banking channels via banks in India or by involving its LO in India
- The route directed through LO, entailed downloading particulars of remittances by using computers (connected to the servers in the UAE) in India, by the LO, drawing cheques on banks in India and dispatching the same to the beneficiaries of the NRI remitters in India. One-time commission was charged by the assessee from the NRI remitters in the UAE only.
- The assessee plead that the services rendered by the LO in India would not be taxable in India since the services were 'preparatory or auxiliary' in nature, and same were governed by the exclusionary provision contained in Article 5(3)(e) of the DTAA.
- In 2003 the assessee sought advance ruling, enquiring whether any income accrued/ deemed to accrue in India from the activities carried by the company in India

Order set forth by the Authority for Advance Ruling (AAR)

- The AAR noted that the activities performed by LO were vital in completion of the transaction of remittance in terms of contracts entered into by assessee with NRIs. Hence, such activities contributed (directly or indirectly) to the earning of income by the petitioner by way of commission.
- In respect of the monies transmitted by telegraphic transfer through banking channels, the role of the LO in India was of an 'auxiliary' character, as in that case the LO had no role to play except attending to complaints.
- It was opined that LO of the assessee in India constituted a PE in India, on account of the fact that downloading data, preparing cheques and remitting the amount through couriers is significant to the completion of the contract with the NRIs.
- It was held that income would be deemed to accrue or arise to the assessee in the UAE from its' LO in India. Based on said ruling, the department issued notices under section 148 of the Act to the assessee.
- Aggrieved, the assessee preferred an appeal before the High Court (HC).

Order set forth by the HC

- The activity carried on by the LOs in India, did not contribute directly or indirectly, to the earning of profits or gains by the assessee in UAE as every aspect of the transaction was concluded in UAE and the commission for the said services of remittances offered by the assessee was also earned in the UAE.
- Hence, it was held that the activities performed by the LOs in India were only supportive of the transaction carried on in the UAE and should be characterized as 'preparatory and auxiliary'. Resultantly, there would be no constitution of PE in India.

SC's Judgement

- The SC ruled in favor of the assessee that activities performed by the LO in India were 'preparatory and auxiliary' in nature and would not attract any tax liability in India. Key observations are as follows :
- Perusing the conditions laid down by the RBI while granting permission for setting up LO in India, the SC noted that the RBI directed the assessee to abstain from engaging in any primary business activity and in establishing business connection as such. However, it was permitted to carry preparatory or auxiliary activities.
- Moreover, the assessee did not carry on any business activity in India as such, but only dispensed with the remittances by performing auxiliary activities as per the instructions given by the NRI remitters in UAE. The transactions had completed in UAE, and no charges towards fee/commission were to be collected by the LO in India in that regard.
- Resultantly, it was opined that the fixed place used by the assessee as LO in India would not qualify as PE in terms of Articles 5(1) and 5(2) of the DTAA as its activities would fall within the ambit of 'preparatory and auxiliary' clause (exclusionary clause) as per Article 5(3) of the DTAA.
- Resultantly, no tax could be levied or collected from the LO of the assessee in India in respect of the primary business activities concluded by the respondent in UAE
- SC remarked that even if the stated activities of the LO were regarded as business activity, the same being of 'preparatory or auxiliary' character by virtue of Article 5(3)(e) of the DTAA, the fixed place of business (LO) of the assessee in India (otherwise a PE) would be deemed to be expressly excluded from being so. And since by a legal fiction it is deemed not to be a PE of the respondent in India, it would not be amenable to tax liability in terms of Article 7 of the DTAA

Nangia Andersen LLP's Take

Such judgements instill the faith of the taxpayers in the judiciary that a benefit under the law shall not be denied to genuine taxpayers. The Courts shall go into the details of the transaction to conclude the matter of taxability. In this case, the Supreme Court specifically took note of the restrictions imposed by the RBI and noted that the LO in India was not undertaking any activity of commercial nature and concluded that the maintenance of fixed place of business solely for the purpose of carrying on any activity of preparatory and auxiliary character, shall not constitute a PE.

Past precedents on the issue

In the case of Hitachi Singapore[1], the ITAT observed that the LO was actively involved in ascertaining customer requirements, price negotiation, obtaining of purchase orders, following up on delivery of material and payments and the only activity not carried out, was receiving payments and invoicing. None of these activities can be classified as Preparatory and auxiliary.

Similarly, in case of GE Energy Parts[2], it was held that the LO was involved in contract and price negotiation, modification of technical specifications and the negotiations for it, to fulfil local needs and regulatory requirements. These were held to be in the nature of core activities and not merely auxiliary.

Therefore, it can be concluded that LO/BO/PO/WOS can constitute PE, if the activities are beyond P&A.

[1]Hitachi High Technologies Singapore Pte Ltd. v. DCIT [2020] 113 taxmann.com 327 (Delhi - Trib.)

[2]GE Energy Parts Inc. v. CIT [2019] 101 taxmann.com 142 (Delhi)

4. ITAT: Income earned through rendering 'Technical Handling Services' through pool participation, not taxable in India

Outcome : In favor of assessee

Issue : Taxability of 'Technical Handling service' income as FTS

Background

The Income Tax Appellate Tribunal, Delhi (ITAT) ruled that income earned by Air France (assessee) through rendition of 'technical handling' services to other International Airlines Technical Pool (IATP) members would not be taxable in India in view of Article 8 of the Indo- France Tax treaty (tax treaty).

Brief facts and contentions

- Assessee, a foreign company and a tax resident of France, is engaged in the operation of aircraft in international traffic. During the year under consideration, the assessee claimed its income earned in India, in entirety, as exempt from income tax under section 90 of the Income Tax Act, 1961 (Act) and filed a nil income tax return
- Assessing Officer (AO) was of the view that, as per the agreements produced, the services (claimed by the assessee to be in the nature of 'Technical handling services') were in the nature of 'Ground handling services' and were being rendered to IATP members as well as non-members. He thus taxed the same as FTS under section 115A read with Section 44D at the rate of 20%.
- The assessee submitted that no ground handling activity was undertaken and only technical handling service was provided to IATP members or guest airlines covered under the IATP Pool, which were exempt from tax under tax treaty.
- AO noted that the assessee did not receive any reciprocal services in India and considering the scale of activities both inside as well as outside India and the collaborations with KLM & Air France Ground Handling Pvt. Ltd. to provide the services and facilities, it was an independent commercial and business activity which was in no way ancillary or connected to the business in the operation of aircraft as defined by Article 8(4) of the tax treaty
- AO's findings were upheld by the Commissioner of Income Tax (Appeals) [CIT(A)]. Consequently, assessee preferred an appeal before the ITAT

ITAT's Judgement

ITAT ruled that income earned by the assessee through operation of aircrafts in international traffic and rendering of 'Technical Handling services' to IATP members/ non-members would not qualify as income eligible for taxation in India. Key observations are as follows:

- The Indian branch office was merely a branch office of assessee that remitted entire receipts to assessee after deducting local expenses and all its income arose from public at large and not through rendering of services to the assessee. Also, no specific services were agreed upon between the assessee and branch office. Hence, the assessee did not have any Permanent Establishment (PE) in India
- Referring to the terms of IATP manual, ITAT pointed out that there was no restriction on rendering services to non-IATP members by member airline and if non-IATP Pool members took such services from a pool, it was to be considered as a pool service to them
- Perusing the terms of Article 8 of the tax treaty, which provides that profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic and through participation in a pool shall be taxable only in that Contracting State, ITAT elucidated that in the instant case, the contracting state was France and though under domestic law the assessee was liable to pay tax in India while deriving income from Indian territory, Air France would be exempted to pay any tax in India in view of Article 8(2) of the tax treaty as its services/activities and profit thereof is derived from pool participation

Nangia Andersen LLP's Take

This ruling is a cogent demonstration of taxation of receipts derived from operation of aircrafts in international traffic and pool participation. The ITAT has given prime concern to the agreement between the parties (IATP manual) and the provisions of tax treaty while deciding the issue in favor of the assessee. Moreover, it has been explicated that where the agreement allows for rendering of services to non-IATP members, tax benefit shall be turned in favor of assessee. Noteworthy observation penned down by the ITAT in this ruling is that, though an income is taxable in India in view of the domestic laws, the indemnity provided to assessee via tax treaty shall always prevail.

Past precedents on this issue

Assessee[1] had a separate engineering set up in all metropolitan cities and engineers certified airworthiness of aircraft of certain other airlines before their take-off, for which payments were made on per-flight basis and same was being cleared through IATA clearance house for services rendered in India. AO was of view that income from aforesaid activities accrued and arose in India and was, therefore, taxable in India

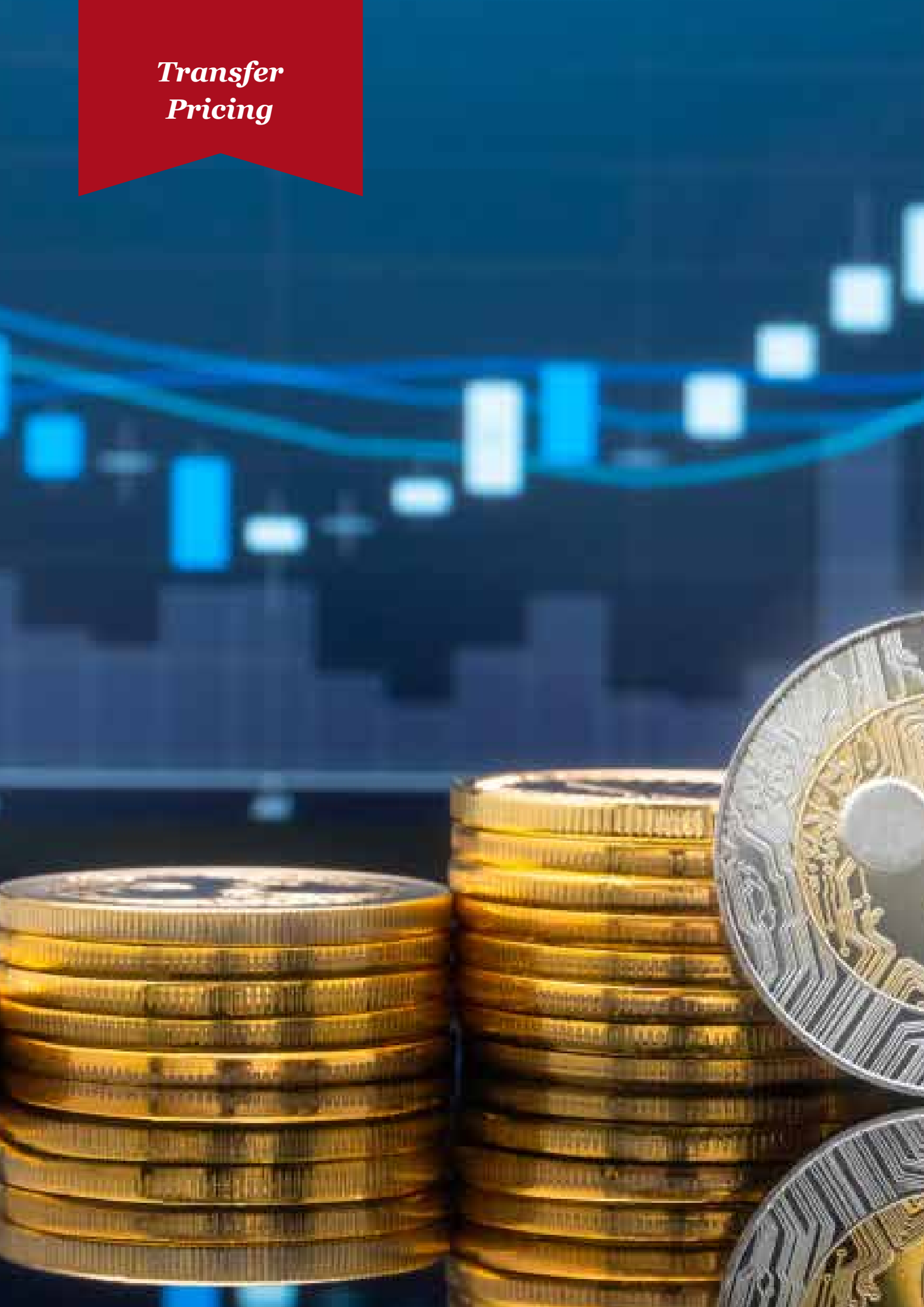
It was opined that assessee had a separate establishment and a separate office set-up to monitor ground handling services, and the different establishment did not form part and parcel of the operation of assessee pertaining to operation of aircrafts in international traffic. Services and facilities provided by assessee was a commercial activity, and excess or idle capacity was provided to other airlines at a price. Moreover, assessee had a branch in India, which constituted a PE in India, and therefore, the income derived from the PE was taxable in India

Rendering services to other airlines was an organized and planned activity to earn income though rendering of such services by assessee to own aircraft did not involve any taxable event, but imparting same to other airlines did result in taxable income from a planned commercial activity which was not exempt under Article 8 of India-UK tax treaty.

Source: Air France v ACIT [ITA Nos. 5008 & 5009/Del/2011] [ITA Nos. 1786 & 2212/Del/2012]

[1]British Airways Plc. v. DCIT [(2002) 80 ITD 90 (DELHI)]

Transfer Pricing



1. High Court upholds ITAT's exclusion of functionally dissimilar comparables; also enlightens that application of filters to be inevitably validated from Annual Reports of Comparables

Outcome : In favour of taxpayer

Category : Relevance of FAR; Functional Similarity/ Dissimilarity

Facts of the case

- Open Solutions Software Services Pvt Ltd ("the taxpayer") is engaged in the business of development of computer software and related services. It provides software development, research and other services specifically to its Associated Enterprises ("AEs").
- During the year under consideration, the taxpayer has entered into International transactions with its AEs for rendering of services related to software development amounting to INR 384,088,682.
- The taxpayer benchmarked the above-mentioned transaction using Transactional Net Margin Method ("TNMM") and computed Profit Level Indicator ("PLI") at 11.87% which was close to the arithmetic mean of PLI of 11.91% of the 14 comparable companies, selected for the purpose of benchmarking the transaction and accordingly, the transaction was undertaken at Arm's Length Price ("ALP") by the taxpayer.
- During the assessment proceedings, TPO carried out fresh economic analysis and selected 21 comparables. The arithmetic mean of PLI of transactions entered by these comparables was computed to be 27.86% by TPO and consequently, an addition of INR 54,905,106 was made by TPO.
- Aggrieved by the same, the taxpayer filed an appeal before the Dispute Resolution Panel ("DRP") for exclusion of 4 comparables. The DRP partially allowed by reducing the adjustment amount to INR 35,952,769, however sustained the inclusion of above-mentioned comparables.
- Aggrieved by the same, the taxpayer filed an appeal before the Income Tax Appellant Tribunal ("ITAT").

Proceedings before the ITAT and High Court

- **ITAT made the following observations** in the context of selection of comparables:

Comparable Name	ITAT's Observations
Infosys Ltd.	**To be excluded on the ground of functionally dissimilarity** as diversified profile, **high risk bearing entity** and **consisting high brand value and intangibles.** Whereas, the taxpayer is risk mitigated captive service provider.
Wipro Technology Services Ltd.	**To be excluded** on the ground of high Related Party Transaction.
Persistent Systems Ltd.	**To be excluded** on the ground of absence of segmental information.
Thirdware Solutions and Sales Ltd.	**To be excluded as comparable on the ground of functional dissimilarity** as well as absence of segmental information.

In view of above, ITAT allowed the taxpayer's appeal and excluded the above mentioned comparables. Aggrieved by the Tribunal's Ruling, the Revenue filed an appeal before the Hon'ble High Court ("HC").

- At the outset, HC reiterated the importance of functional similarity as provided in Rule 10B (2) of the IT Rules while selecting comparables for the benchmarking of an international transaction from arm's length perspective.

- Further, HC relied on a catena of precedents including co-ordinate bench rulings in case of ***Rampgreen Solutions Pvt. Ltd. v. CIT,[2015] 60 taxmann.com 355 (Delhi), Chryscapital Investment Advisors (India) Pvt. Ltd. v DCIT,[2015] 56 taxmann.com 417*** to stress that while applying the TNMM also, comparables cannot be picked on the basis of broad classification under various heads, and that the actual functional profile of the comparable must be similar with that of the taxpayer.

- Lastly, HC explains that the filters are applied to narrow down the search to find the comparables that are closest to the taxpayer and the use of filters has to be necessarily validated from the annual reports. In this regard, HC also added that "if the TPO would have done this exercise on the basis of the actual data in the report of the comparables, he would surely have the freedom to adopt or reject the comparables."

  In view of the aforementioned observations, HC concluded that the test of functional similarity applied by the Tribunal is in consonance with the legal position and accordingly upheld the case against the Revenue and in favour of the taxpayer.

Nangia Andersen LLP's Take

This judgement adds to the plethora of judgements, highlighting procedures to be followed for the purpose of selection of comparables while benchmarking an International transaction from arm's length perspective as embodied in Indian Transfer Pricing Regulations.

The instant ruling also reiterated that the FAR analysis of the comparables is a first and foremost step to be undertaken for the purpose of benchmarking, irrespective of the fact that which method is adopted by the taxpayer for benchmarking the said transactions.

Further, the ruling also stresses on the fact that merely passing the filter shall not result in a comparable becoming immune to challenge by the taxpayer and explains that use of such filters have to necessarily be validated from the annual reports.

Source: Open Solutions Software Services Pvt Ltd [TS-281-HC-2020(DEL)-TP]

2. ITAT held that re-characterising payment of maintenance services relating to software licenses as technical services unreasonable citing rule of consistency

Outcome : In the favour of taxpayer

Category : Principle of aggregation and Rule of Consistency

Facts of the case

- Parametrics Technology Private Limited ("taxpayer") was engaged in the business of marketing of software license of its Associated Enterprise ("AE"), sales support service, maintenance of software, consulting and training activities.
- During the year under consideration i.e. Assessment Year 2011-12, the taxpayer has purchased software licences from its AE viz. PTC, USA for resale in India. The taxpayer has also entered maintenance services with its customers who purchased the software licenses.
- The taxpayer had remitted 40% of sales revenue and maintenance charges collected from its customers to its AE and benchmarked these closely linked transactions on aggregate basis using Transactional Net Margin Method ("TNMM").
- During the course of assessment proceedings, the Transfer Pricing Officer ("TPO") accepted the TNMM method adopted by the taxpayer used for benchmarking the transaction of payment made towards purchase of software licenses and held the same to be at arm's length. However, the TPO was of the view that the payment of 40% of maintenance services relating to software licenses as excessive and re-characterised the same as technical services. Further, the TPO benchmarked the said transaction using Profit Split Method ("PSM") and determined that the revenue from the maintenance services should be allocated ratio between the taxpayer and its AE in the ratio of 90:10 based on the nature of functions performed by them. Therefore, the TPO determined Arm's Length Price ("ALP") of payment of maintenance services at 10% of revenue realisation and accordingly, made an upward adjustment.
- Aggrieved by the same, taxpayer filed objections before the Dispute Resolution Panel ("DRP"), wherein the DRP upheld the addition proposed by TPO.
- Aggrieved by the same, taxpayer filled an appeal before the Income Tax Appellate Tribunal ("ITAT"/ "the tribunal").

ITAT Ruling

- ITAT opined that the TPO was not justified in viewing maintenance services as separate from the distribution activity as both the activities are inter-linked.
- ITAT noted that the taxpayer's benchmarking using TNMM method by aggregating both the transactions has been accepted by the TPO in the immediately preceding and succeeding years.
- ITAT also noted that the taxpayer has placed reliance on the Hon'ble Supreme Court ruling in the case of **Radhasoami Satsang vs. CIT [1992] (193 ITR 321)** wherein the taxpayer submitted that the principle of consistency is to be followed by the tax authorities.
- Accordingly, ITAT disregarded the TPO's approach and directed TPO to compute the ALP of both the transactions on aggregate basis using TNMM method.

Nangia Andersen LLP's Take

The verdict in the instant case reiterates the fact that the results of the transfer pricing assessments should be consistent and not unnecessarily varied by the tax authorities unless there is a significant change in the business or international transactions undertaken by the taxpayer.

Further, the verdict in the instant case also reiterates the fact that Aggregation of transactions or 'blended Transaction approach' is a wide-spread exercise for benchmarking the transactions when the transactions are closely interlinked.

Source: Parametrics Technology Private Limited [TS-276-ITAT-2020(Bang)-TP]


Regulatory
Compliance

Company Law Updates

Amendment in CSR schedule

The Government of India has set up the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund' (PM CARES Fund) on March 28, 2020 with the primary objective of dealing with any kind of emergency or distress situation such as that posed by COVID 19 pandemic. The Ministry of Corporate Affairs ('MCA') on March 28, 2020 itself issued an office memorandum to announce that contribution of PM CARES shall be considered as eligible CSR Activity under item no. (viii) of Schedule VII of the Companies Act, 2013 i.e. contribution to the prime minister's national relief fund or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women.

Now, on May 26, 2020, MCA has come up with a notification to insert **"Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund" ('PM CARES Fund') under Schedule VII of the Companies Act 2013,** therefore any contribution made to **PM CARES FUND** shall be an eligible CSR activity. The said notification is inserted from a retrospective effect from March 28, 2020.

Extension of validity for names already reserved

In continuation of the earlier extension provided by MCA for the validity of name approvals, MCA for the second time has extended the validity of applied names and other resubmissions in view of the extended lockdown due to COVID 19. The extended timelines for submission of the requisite forms shall be as follows:

S. No	Purpose	Extension
1.	Name reserved for Incorporation of a **Company/LLP** and Expiring between March 15th and May 31st 2020	20 days beyond May 31st 2020
2.	Names reserved for change of existing name for companies and expiring between March 15th and May 31st	60 days beyond May 31st 2020
3.	Names reserved for change of existing name for LLPs and expiring between March 15th and May 31st	20 days beyond May 31st 2020
4.	Any resubmission for companies/LLPs	15 days beyond May 31st 2020

Relaxation from physical dispatch of notice under rights issue for listed companies

In terms of SEBI (ICDR) Regulations 2018, where a listed company wants to issue shares to its existing shareholders on Rights basis, it has to issue notice to the shareholders through postal or courier services. However, due to the ongoing lockdown, SEBI, vide circular SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 06, 2020, has relaxed this requirement for the rights issues opening to July 31, 2020. To bring conformity with the said relaxation under Companies Act, the Ministry of Corporate Affairs vide issue of General Circular No. 21/ 2020, dated May 11, 2020 has also clarified that inability to send the notice through registered post, speed post or courier services shall not be treated as a non-compliance provided the Company complies with the conditions provided in the said circular issued by SEBI.

Allowing holding of annual general meeting through audio visual means

In view of the continuing lockdown and restrictions on the movement of persons at several places in the country, Ministry of corporate Affairs vide General circular No. 20/2020 dated May 05, 2020, has allowed companies to hold their Annual General Meetings through video conferencing or other audio visual means during the calendar year 2020.

The circular also clarifies that in such annual general meetings only those items of special business, which are considered to be unavoidable by the Board may be transacted. The financial statements (including Board's report, Auditor's report or other documents required to be attached therewith), shall be sent by email to all the members, trustees for the debenture-holder of any debentures issued by the company, and to all other persons so entitled.

FEMA Updates

Extension of time limits for settlement of import payment

As per the Master Direction on Import of Goods and Services dated January 01, 2016, as amended from time to time, the remittances against normal imports (i.e. excluding import of gold/diamonds and precious stones/ jewellery) shall be completed not later than **6 months** from the date of shipment, except in cases where amounts are withheld towards guarantee of performance etc.

Due to the outbreak of COVID- 19 pandemic and the ongoing lockdown, RBI vide Circular No.33 dated May 22, 2020 has extended the time period for completion of remittances against such normal imports **from 6 months to 12 months** from the date of shipment for such imports made on or before **July 31, 2020.**

Labour Law Updates

Amendment to Employees Provident Funds and Miscellaneous Provisions Act, 1952 In light Of COVID 19

Due to the outbreak of COVID 19 and the need to provide liquidity in the hands of employers and employees, the government vide notification number S.O. 1513(E), dated May 18, 2020 has exempted establishments other than Central Public Sector Enterprises and State Public Sector Enterprises and other establishments owned by or under the control of the Central/ State Government to contribute additional 2% to the fund for the months of May, June and July, 2020. Therefore, the said establishments shall be required to contribute 10% instead of 12% to the fund for the month of May, June and July of the year 2020.

Further, the notification also clarifies that the clause V shall not be applicable to the establishments eligible for relief under the Pradhan Mantri Garib Kalyan Yojana guidelines issued by the Employees' Provident Fund Organization vide its Office Memorandum No.C-1/Misc./2020-21/Vol.II/Pt. dated 9th April, 2020.

GST

GST Clarifications and Updates

1. Filing of Form GSTR-3B by Companies through Electronic Verification Code (EVC)

- A proviso has been inserted in Rule 26 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') with effect from 21 April 2020, allowing companies to file the return under Section 39 in Form GSTR-3B verified through EVC during the period from 21 April 2020 to 30 June 2020.

(Notification No. 38/2020 – Central Tax dated 05 May 2020)

2. Manner of furnishing NIL return in Form GSTR-3B by short messaging service (SMS) facility

- A new Rule 67A has been inserted in the CGST Rules to enable registered person to file NIL return under Section 39 in Form GSTR-3B through a short messaging service using the registered mobile number and the return will be verified by a registered mobile number based on one time password (OTP) facility.
- Further, an explanation has been inserted in Rule 67A to provide that NIL return means a return for a tax period that has "nil" or "no entry" in all the tables in Form GSTR-3B.
- This provision shall be effective with effect from a date to be notified later.

(Notification No. 38/2020 – Central Tax dated 05 May 2020)

3. Amendment in special procedure prescribed for companies undergoing corporate insolvency resolution process

- A new proviso has been inserted in the Notification No. 11/2020- Central Tax dated 21 March 2020 prescribing the special procedure for Companies undergoing corporate insolvency resolution process ('Corporate debtor'). As per the amendment, the procedure shall not be applicable to those corporate debtors who have furnished the statements under section 37 and the returns under section 39 for all the tax period prior to the appointment of IRP/ RP.
- Further, the time limit for obtaining registration has been amended which states that the corporate debtor can obtain registration as distinct person in each state of presence, within 30 days of the appointment of the IRP/ RP or by 30 June 2020, whichever is later. This amendment is effective from 21 March 2020 i.e. date of Notification No. 11/2020-Central Tax.

(Notification No. 39/2020 – Central Tax dated 05 May 2020)

4. Validity of e-way bills generated on or before 24 March 2020

- As per amendment, if an e-way bill has been generated under Rule 138 of the CGST Rules on or before 24 March 2020 and the period of validity of such e-way bills expires during the period from 20 March 2020 to 15 April 2020, the validity of such e-way bill shall be deemed to have been extended till 31 May 2020.

(Notification No. 40/2020 – Central Tax dated 05 May 2020)

5. Extension in due date for filing of Annual return for FY 2018-19

- Due date for filing of annual return in Form GSTR-9 and Reconciliation statement in Form GSTR-9C for FY 2018-19 has been extended to 30 September 2020.

(Notification No. 41/2020 – Central Tax dated 05 May 2020)

6. Extension in due date for filing of Form GSTR-3B for FY 2018-19 for taxpayers whose principal place of business is in the Union Territory of Ladakh

- Due date for furnishing return in Form GSTR-3B for the months of January 2020 to March 2020 for registered persons whose principal place of business is in the Union territory of Ladakh has been extended till 20 May 2020. This is effective from 24 March 2020.

(Notification No. 42/2020 – Central Tax dated 05 May 2020)

7. Retrospective amendment to section 140 of CGST Act prescribing time limit for availing transition credit

- Section 128 of the Finance Act, 2020 provided for the retrospective amendment to Section 140 of Central Goods and Services Tax Act, 2017 ('CGST Act') granting power to prescribe a time limit for availing transition credit. This amendment has been made effective.

(Notification No. 43/2020 – Central Tax dated 16 May 2020)

8. Clarifications in respect of certain challenges faced by taxpayers in adhering to the compliance requirements

- **Issues related to Insolvency and Bankruptcy Code, 2016**

- **Difficulty faced by IRP/ RP in obtaining separate GST registration within 30 days from 21 March 2020 i.e. date of issuance of notification during the period of lockdown**

  The time limit for obtaining registration has been extended vide Notification No. 39/2020 – Central Tax dated 05 May 2020. Accordingly, it has been clarified that IRP/ RP is required to obtain GST registration within 30 days of the appointment of the IRP/ RP or by 30 June 2020, whichever is later.

- **Requirement to obtain a fresh registration by IRP where they are complying with all the provisions of GST law under the registration of corporate debtor have not defaulted in filing all the GSTR-3B prior to the period of appointment of IRP's**

  It has been clarified that IRP/RP would not be required to take a fresh registration in those cases where statements in FORM GSTR-1 and returns in FORM GSTR-3B for all the tax periods prior to the appointment of IRP/RP, have been furnished under the registration of Corporate Debtor (earlier GSTIN).

- **Requirement to transfer same new GSTIN from the IRP to RP where an appointed IRP is not ratified and a separate RP is appointed**

  It has been clarified that such a change will be deemed to be change in authorized signatory and it would not be considered as a distinct person on every such change after initial appointment. Such a change in authorized signatory will require a non-core field amendment in registration form. If previous authorized signatory does not share the login credentials with his successor, details of change can be added through jurisdictional authority as primary authorized signatory.

- **Other Covid-19 related representations**

- **Extension in due date for the merchant exporters where they are required to export goods within a period of 90 days from the date of issue of invoice**

  Vide Notification No. 35/2020 – Central Tax dated 3 April 2020, the time limit for compliance of any action by any person which falls during the period from 20.03.2020 to 29.06.2020 has been extended to 30 June 2020.

  Accordingly, it has been clarified that the requirement of exporting the goods by the merchant exporter within 90 days from the date of issue of invoice gets extended to 30 June 2020 provided the completion of 90 days falls within the period from 20.03.2020 to 29.06.2020.

- **Extension for furnishing of Form GST ITC-04 in respect of goods dispatched to a job worker or received from a job worker during the quarter from January 2020 to March 2020**

  It is clarified that the due date of furnishing of Form GST ITC-04 for the quarter ending March 2020 stands extended to 30 June 2020.

(Circular No. 138/08/2020 – GST dated 6 May 2020)

9. Advance Rulings & Judgements

- **Karnataka Authority for Advance Ruling ('AAR') rules GST is not payable on consideration paid to the Executive Directors**

  The AAR held while dealing with the issue of inclusion/ exclusion in aggregate turnover that if the remuneration is received as Executive Director, it is not includable in the aggregate turnover as it is the value of the services supplied by the applicant being an employee. However, if the remuneration is received as Non-Executive Director, such remuneration is liable to tax under RCM under section 9(3) of the CGST Act in the hands of the company under entry no. 6 of the Notification.

M/s Anil Kumar Agrawal (AR No. KAR ADRG 30/2020) dated 04.05.2020

- **Delhi High Court allows transition of pre-GST Credit to GST till 30 June 2020**

- The hon'ble Delhi High Court while dealing with the issue of transition of credit to GST held that the term technical difficulties cannot be restricted only to a difficulty faced by or on the part of the Respondent. It would also include within its purview any difficulties faced by the taxpayers as well. Just like respondent, petitioners also require time to adapt to a new system. The CENVAT credit which was accrued and vested is the property of the assessee and is a constitutional right under Article 300A of the Constitution. The same cannot be taken away merely by way of delegated legislation by framing rules, without there being any overarching provision in the GST Act.

- Section 140(1) of CGST Act enables a registered person to carry forward the ITC accumulated as on 30th June 2017. Since Section 140 does not provide statements related to the consequences in case of delayed filing of TRAN-1, rule 117 needs to be read and understood as a directory but not mandatory. Accordingly, the time limit prescribed under GST law is procedural and directory and cannot affect the substantive right of the registered taxpayer.

- The Revenue has challenged the decision of Delhi High Court by filing a Special Leave Petition (SLP) before the Supreme Court.
  Further, the CBIC vide Notification No. 43/2020 - Central Tax dated 16 May 2020 has made the retrospective amendment to Section 140 of the CGST Act effective with effect from 1 July 2017 granting it power to prescribe a time limit for availing transitioning credit.

Brand Equity Treaties Limited & Others v/s The Union of India and Ors [W.P.(C) 11040/2018 and C.M. No. 42982/2018]

- **Karnataka Appellate Authority of Advance Ruling (AAAR) sets a precedent by reversing the AAR**

- In the matter of eligibility to claim input tax credit, the AAAR held that glass partitions are not permanent and are not embedded to the earth. They can be dismantled and moved without demolishing the civil structure. Glass partitions are movable property and addition or fixing of glass partitions does not amount to construction of immovable property. Accordingly, input tax credit of taxes paid will be eligible on glass partition.

M/s WeWork India Management Private Limited [Order No. KAR/AAAR-17/2019-20 dated 06.03.2020]

- **Delhi High Court quashes restriction on rectification of 'same period' return**

- Issue involved - Whether Circular No. 26/26/2017 stating that GSTR-3B can be corrected only in the month in which errors have been noticed is in line with the statutory provisions of the CGST Act

- The court observed that the scheme envisaged under the CGST Act provided for a facility to reconcile the monthly data through the IT system of the Government. If the statutorily prescribed returns viz., GSTR-2 and GSTR-3 had been operationalized, the Petitioner would have known the correct ITC available to it in the relevant period and could have discharged its liability through ITC. GSTR-3B is required to be filed manually and does not provide various checks as envisaged in the Act. Para 4 of the relevant circular is not in consonance with the provisions of Act and accordingly High Court permitted the petitioner to rectify GSTR-3B filed during the relevant period.

Bharti Airtel Limited Vs Union of India & Ors. (Delhi High Court); W.P. No. 6345/2018 dated 05/05/2020

- **Tamil Nadu Authority of Advance Ruling (AAR) ruled that the supply of DVDs and CDs with Licensed Software cannot be treated as e-books**

- Vide Notification No. 13/2018-Central Tax (Rate) dated 26.07.2018 GST rate on e-book was reduced to 5%. The Applicant wanted to understand if it can avail the benefit of this lower tax rate for supply of DVDs and CDs with Licensed Software.

- The Authority held that the DVD supplied by The Law Weekly Desktop Software is not an electronic version of print journals. If they were, it would be machine readable files in any format such as .doc, .txt,. .pdf. It further held that supply of DVDs/CDs & dongle with access for an initial subscription period is composite supply. Wherein there is a supply of DVD/CD & Dongle and the loaded software (regarded as Goods) along with license to use the same for a limited period (regarded as service). Accordingly, the authority denied the benefit of lower tax rate for supply of DVDs/CDs.

Venbakkam Commandur Janardhanan, Proprietor M/s Law Weekly Journal [Order No. 13/AAR/2020 dated 27.02.2020

Customs Clarifications and Updates

1. Increase in effective rate of Road and Infrastructure Cess

- Amendment to Notification No. 18/2019 - Customs dated 6 July 2019 so as to increase effective rate of Road and Infrastructure Cess collected as additional duty of customs on petrol and diesel by Rs. 8 per litre.

(Notification No. 21/2020 - Customs dated 05 May 2020)

2. Extension of period of validity of existing Export Performance Certificates

- Amendment to Notification No. 50/2017 - Customs dated 30 June 2017 so as to extend the period of validity of existing Export Performance Certificates for FY 2019-20 up to 30 September 2020.

Notification No. 23/2020 - Customs dated 14 May 2020)

3. List of eligible seaports - Addition

- The Central Board of Indirect Taxes and Customs has included the 'Gopalpur port' in the list of sea-ports as a port of registration to enable the eligible exporters and importers to avail the eligible benefits of different schemes on imports and exports, including MEIS, SEIS, AA, EPCG etc. Similar amendment made in the FTP, Handbook Procedures (HBP) para 4.37 to include the 'Gopalpur port' in the list of seaports.

(Notification No. 25/2020 - Customs dated 21 May 2020 and Public Notice No. 06/2015-2020 dated 22 May 2020)

4. Review of Circular No. 17/2020 – Customs dated 03 April 2020 namely, 'Measures to facilitate trade during the lockdown period- section 143 AA of the Customs Act, 1962'

- Further extension of facility of accepting undertaking in lieu of bond for the period till 30 May 2020. Consequently, the date for submission of proper bond in lieu of which the undertaking is being temporarily accepted is extended till 15 June 2020.

(Circular No. 23/2020 - Customs dated 11 May 2020)

5. Electronic sealing - deposit in and removal of goods from customs bonded warehouses

- Circular No. 19/2018 - Customs dated 18 June 2018 and Circular No. 10/2020 - Customs dated 07 February 2020 provided for RFID sealing of goods to be deposited-in or removed from customs bonded warehouses.
- The implementation of these circulars was deferred vide Circular No. 54/2018 - Customs dated 31 December 2018 and Circular No. 20/2020 - Customs dated 21 April 2020. A comprehensive Circular is under consideration and shall be soon placed in public domain (cbic.nic.in) to seek inputs/suggestions from all stakeholders before issuance.
- Hence, Circular No. 19/2018 - Customs dated 18 June 2018 and Circular No. 10/2020 -Customs dated 07 February 2020 issued previously in this matter and yet to be operationalized, stand rescinded.

(Circular No. 25/2020 - Customs dated 18 May 2020)

Foreign Trade Policy Clarifications and Updates

1. Amendment in Export policy of Sanitizers

- Notification No. 53/2015-2020 dated 24 March 2020 is amended to the extent that only 'Alcohol based Hand Sanitizers' falling under any ITCHS code including the HS codes 3004, 3401, 3402, 380894 are prohibited for export. All other items falling under the above HS codes are freely exportable.

(Notification No. 21/2020 - Customs dated 05 May 2020)

2. Amendment in import policy conditions of Silver under Chapter 71 of ITC (HS), 2017, Schedule - I (Import Policy)

- Import of Silver under AA and supply of silver directly by foreign buyers to exporters under Para 4.45 of FTP against export orders are exempted.

(Notification No. 05/2015-2020 dated 13 May 2020)

3. Amendment in Export policy of Masks

- Notification No. 44/2015-2020 dated 31 January 2020 read with Notification No. 52/2015-2020 dated 19 March 2020 prohibiting the export of all types of masks, is amended to allow the export of non-medical/ non-surgical masks of all types (cotton, silk, wool, knitted). All other types of masks falling under any ITCHS code, including the HS codes 39260, 621790, 630790, 901890, 9020 would continue to remain prohibited for exports.

(Notification No. 06/2015-2020 dated 16 May 2020)

4. Amendment in Export policy of Paracetamol API

- Notification No. 50/2015-20 dated 03 March 2020 is further amended to remove restriction on export of Paracetamol APIs, making its export 'free' with immediate effect

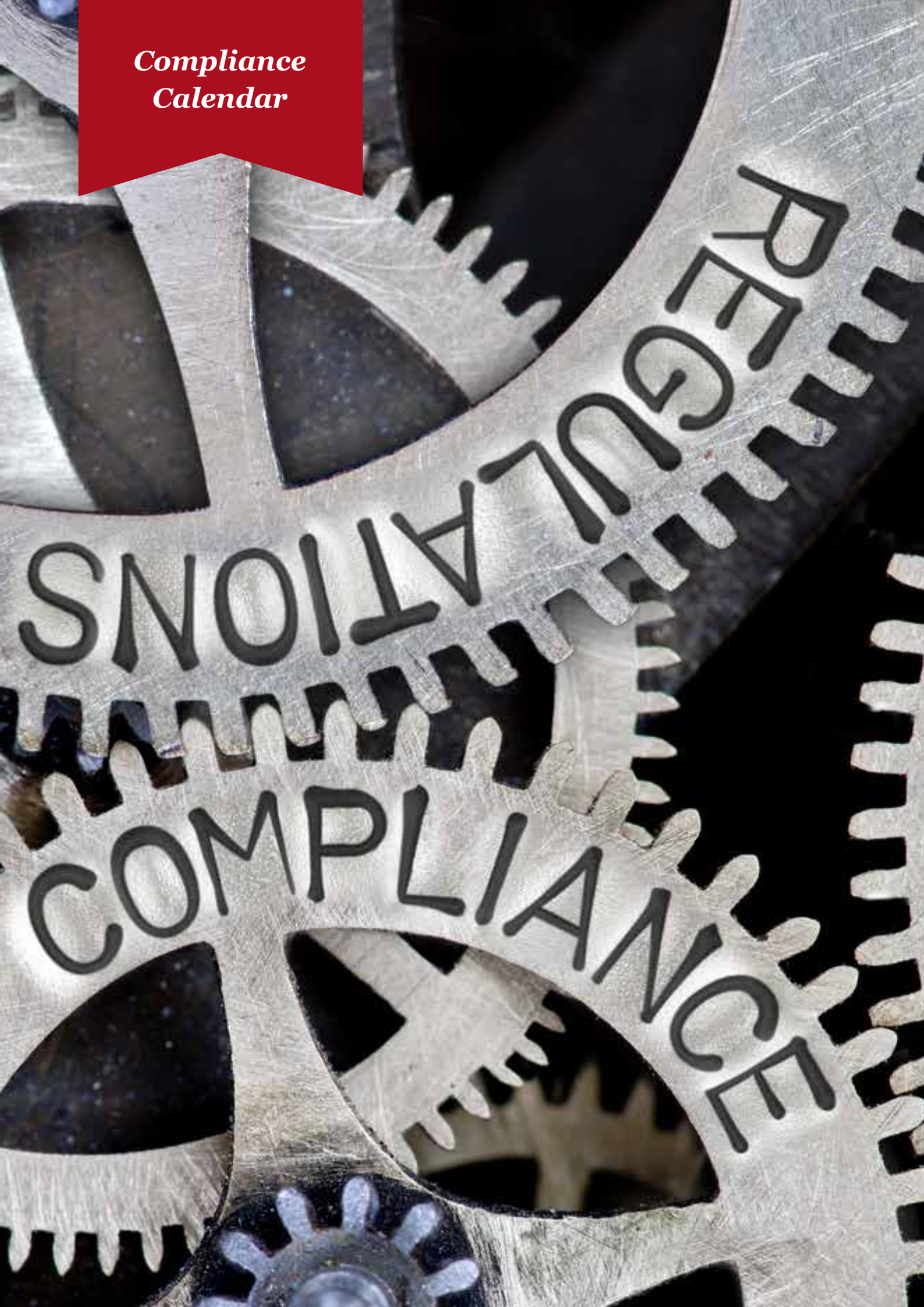
(Notification No. 07/2015-2020 dated 28 May 2020)

5. Issuance of Preferential Certificate of Origin (CoO) for India's exports to Thailand and Vietnam under ASEAN-India FTA

- The exporters were expressing difficulties in obtaining preferential access in Thailand and Vietnam based on the digitally signed electronic CoO.
- In view of above, the earlier procedure of issuing physical copy of CoO by the designated agencies for exports to Thailand to Vietnam under ASEAN-India FTA is being restored.
- The CoO applications under ASEAN-India FTA for exports to Thailand and Vietnam should now be submitted manually by the exporters to the offices of the designated issuing agencies i.e. EIA, MPEDA and Textile Committee.
- The e-platform (coo.dgft.gov.in) will not accept CoO applications submitted for exports destined to Thailand and Vietnam. However, the e-platform shall continue to accept and process CoO applications for export to other countries under ASEAN-India FTA.

(Trade Notice No. 12/2020-2021 dated 22 May 2020)

Compliance Calendar



Direct Tax

Due Date	Particulars
7th June 2020	Payment of TDS - For the period 1st May 2020 to 31st May 2020 (However, reduced Interest rate of 9% p.a. shall apply if paid by 30 June 2020)
	Payment of Equalisation Levy - For the period 1st May 2020 to 31st May 2020 (However, reduced Interest rate of 9% shall apply if paid by 30 June 2020)
14th June 2020	Issuance of TDS certificate in Form 16B for tax deposited u/s 194-IA (TDS on sale of immovable property) in the month of April 2020 - tax deduction in April 2020 (Due date has been extended to 30 June 2020) (No late fee /penalty shall apply)
	Issuance of TDS certificate in Form 16C for tax deposited u/s 194-IB (TDS on rent of immovable property) in the month of April 2020 - tax deduction in April 2020 (Due date has been extended to 30 June 2020) (No late fee /penalty shall apply)
	Issuance of TDS certificate in Form 16D for tax deposited u/s 194-M (TDS on payment made to contractors) in the month of April 2020 - tax deduction in April 2020 (Due date has been extended to 30 June 2020) (No late fee /penalty shall apply)
15th June 2020	Issuance of TDS Certificate to the Deductee in respect of the Tax deducted for (other than salary) the quarter ending on 31st March 2020.(Due date has been extended to 30 June 2020)(No late fee/penalty shall apply)
	Issuance of TDS certificate to the employees for payment of salary and deducted TDS thereon for Financial Year 2019-20.(Due date has been extended to 30 June 2020)(No late fee/penalty shall apply)
	Payment of 1st Instalment of Advance tax for the Financial Year 2020-21. (However, reduced Interest rate of 9% p.a. shall apply if paid by 30 June 2020)
29th June 2020	Furnishing statement (in Form No. 3CEK) by an eligible investment fund under Section 9A in respect of its activities in the Financial Year 2019-20.
30th June 2020	Payment and furnishing of challan-cum- statement via Form 26QB in respect of tax deducted under section 194-IA in the month of May 2020.
	Payment and furnishing of challan-cum-statement (Form 26QC) in respect of tax deducted under section 194-IB in the month of May 2020.
	Payment and furnishing of challan-cum-statement (Form 26QD) in respect of tax deducted under section 194-M in the month of May 2020.
	Furnishing of Return in respect of the Securities Transaction Tax for the Financial Year 2019-20.
	Furnishing of quarterly return of Non- deduction of the TDS by a banking company from interest on time deposit for the quarter ending 31st March, 2020.
	Furnishing of Statement (in Form 64C) by the Alternative Investment Funds (“AIF”) to the unit holders in respect of income distributed during the Financial Year 2019-20.
	Furnishing of Statement (in Form 64B) by the Business Trust to the unit holders in respect of income distributed during the Financial Year 2019-20.
	Due dates which are falling between the period from 20.03.2020 to 29.06.2020 has been extended and due for compliance by 30th June 2020. This is the final date of all the compliances till the furtherance of any communication from the Government.

Direct Tax

Due Date	Particulars
Extension of statutory and regulatory compliance matters due to COVID-19 outbreak	
	Last date for filing **belated and revised income tax returns** for (FY 2018-19) extended from 31 March 2020 to 30 June 2020.
	Aadhaar-PAN linking date extended from 31 March 2020 to 30 June 2020.
30th June 2020	Issue of Notice/Intimation/notification/approval order/sanction order (In case of due date of compliance between 20 March 2020 to 29 June 2020)
	Filing of appeal (In case of due date of compliance between 20 March 2020 to 29 June 2020)
	Furnishing of return/ statements/ applications/ approval order/sanction order (In case of due date of compliance between 20 March 2020 to 29 June 2020)
	Completion of proceedings by authority (In case of due date of compliance between 20 March 2020 to 29 June 2020)
	Any Other compliance (Investment in saving instruments or investments for roll over benefit of capital gains under Income Tax Act, Wealth Tax Act, Prohibition of Benami Property Transaction Act, Black Money Act, STT law, CTT Law, Equalization Levy law, Vivad Se Vishwas Act) (In case of due date of compliance between 20 March 2020 to 29 June 2020)
	Payment of Advance Tax (In case of due date of compliance between 20 March 2020 to 29 June 2020) (No late fee /penalty shall apply. However, reduced Interest rate of 9% shall apply)
	Payment of Self-Assessment Tax (In case of due date of compliance between 20 March 2020 to 29 June 2020) (No late fee /penalty shall apply. However, reduced Interest rate of 9% shall apply)
	Payment of Regular Tax (In case of due date of compliance between 20 March 2020 to 29 June 2020) (No late fee /penalty shall apply. However, reduced Interest rate of 9% shall apply)
	Payment of TDS/TCS/Equalization Levy (In case of due date of compliance between 20 March 2020 to 29 June 2020) (No late fee /penalty shall apply. However, reduced Interest rate of 9% shall apply)

GST

Return Form	Particulars	Return to be furinshed by	Periodicity	Due Date
GSTR- 1	**Outward supplies return**	Normal Registered person	Monthly/ Quarterly	11th of the succeeding month. No interest or late fee if GSTR-1 for the month of May 2020/ quarter January 2020 – March 2020 is filed on or before 30 June 2020.
GSTR- 3B	**Summary of inward and outward supplies and payment of tax**		Monthly	• 27th June for the taxpayers (for all the states & UTs) having aggregate turnover of INR 5 Cr & above for the previous financial year; • 12th July for the taxpayers* having aggregate turnover less than INR 5 Cr in the previous FY in 15 specified States/UTs; • 14th July for the taxpayers** having aggregate turnover less than INR 5 Cr in the previous FY in 22 specified States/UTs.
CMP-08	**Summary of self assessed tax liability**	Composition Dealer	Quarterly	18th April for the quarter Jan'20-Mar'20. The same can now be filed till 7th July 2020.
GSTR- 4	**Return for outward supplies, inward supplies and payment of tax**	Composition Dealer	Annual	30th April for the Financial Year ending 31st March 2020. The same can now be filed till 15th July 2020.
GSTR- 6	**ISD Return (Refer Note No- 1)**	Input Service Distributor	Monthly	13th of the succeeding month **(Refer Note No- 2)**
GSTR- 7	**TDS Return (Refer Note No- 1)**	Person deducting TDS	Monthly	10th June'2020 **(Refer Note No- 2)** (for the tax deducted in the month of May 2020)
GSTR- 8	**TCS Return (Refer Note No- 1)**	E-Commerce Operators	Monthly	10th June'2020 **(Refer Note No- 2)** (for taxpayers liable to pay TCS for the month of May 2020)
GSTR- 9	**Annual Return**	Registered person	Annual	30**th** September'2020 (for the Financial year 2018-19)
GSTR-9C	**Audit report & reconciliation statement**	Registered Person	Annual	30th September'2020 (for the Financial year 2018-19)

GST

Form GSTR 1 and Form GSTR 3B (GSTR 2 & GSTR 3 deferred for the time being) to be furnished by every registered person [other than taxpayer registered under the composition scheme, nonresident taxpayer, taxpayer registered as an ISD, a person liable to deduct or collect the tax (TDS/TCS)]

GST Audit Report (in Form GSTR 9C) has to be filed along with the Annual Return (in Form GSTR 9) in respect of each GST registration where the aggregate turnover [of all the registered units within India (under the same PAN) is more than INR 2 Crores during the financial year. For FY 2018-19, the turnover limit has been raised to 5 Crores.

Form GST ANX 1 is required to be filed on monthly basis from April 2020 (deferred till October 2020) onwards by person registered for GST, having aggregate turnover of more 5 Crore in previous financial year

Note No. 1: For ISD, TDS and TCS return, the due dates for May 2020 have been relaxed till 30 June 2020 as a matter of compliance whose time limit is expiring between 20th March and 29th June via Notification No. 35/2020 – Central Tax.

*** 15 Specified States/ UTs:** Taxpayers whose principal place of business is in the states of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep.

**** 22 Specified States/ UTs:** Taxpayers whose principal place of business is in the states of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi.

Regulatory

S. No.	Compliance	Due Date
1.	DPT-3 (Annual Return of Deposit And Exempted Deposit)	June 30, 2020
2.	ECB-2 (Monthly Return of ECBs)	Within 7 working days from the closure of month to which it relates

About Us

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Quality of our people is the cornerstone of our ability to serve our clients. For this reason, we invest tremendous resources in identifying exceptional people, developing their skills, and creating an environment that fosters their growth as leaders. From our newest staff members through senior partners, exceptional client service represents a dedication to going above and beyond expectations in every working relationship.

We strive to develop a detailed understanding of our clients' business and industry sector to offer insights on market developments and assist our clients develop effective strategies and business models. We have the resources and experience necessary to anticipate and competently serve our clients on issues pertaining to all facets of Tax and Transaction Advisory. We take pride in our ability to provide definite advice to our clients with the shortest turnaround time.

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