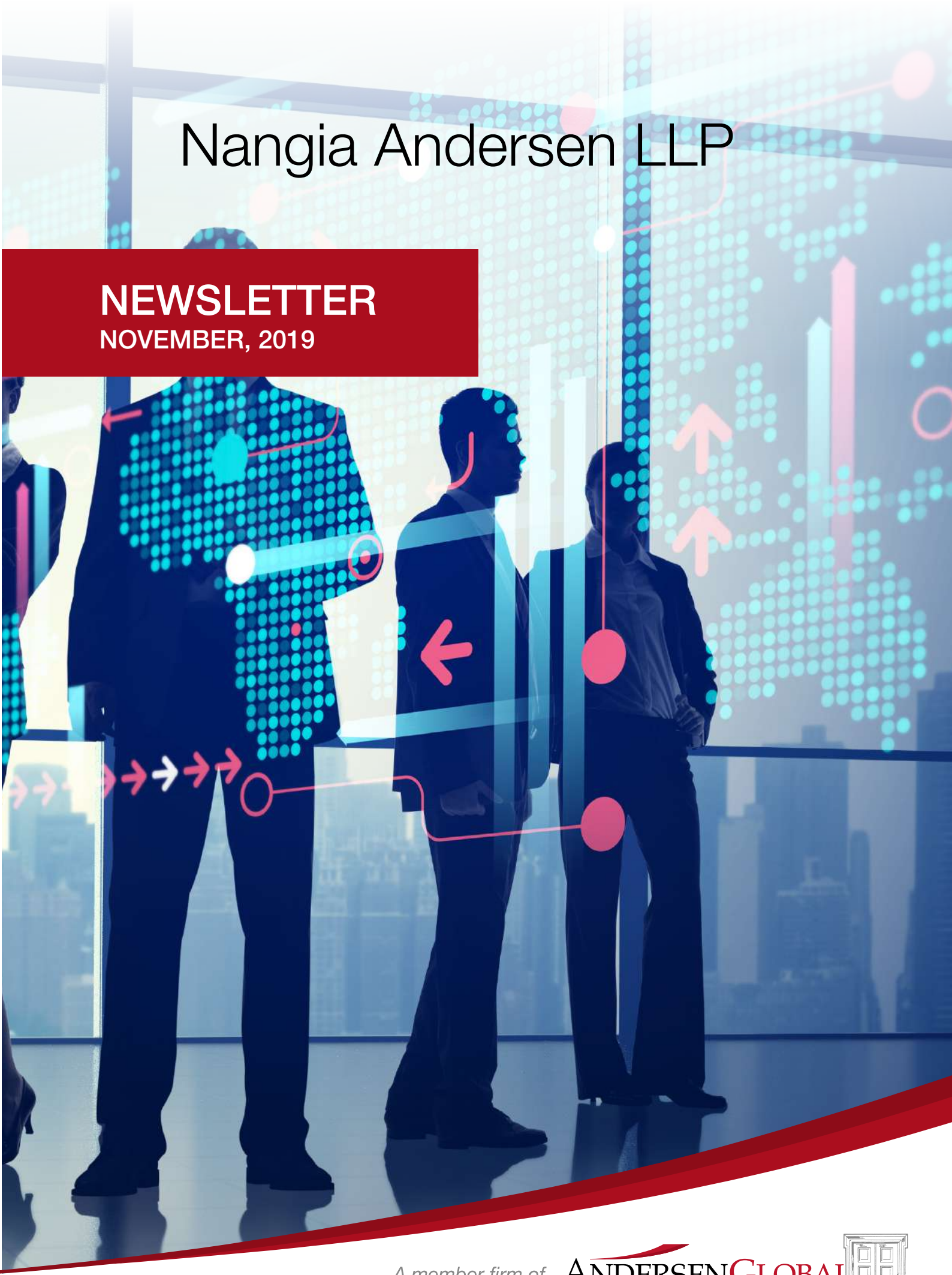
Nangia Andersen LLP

NEWSLETTER

NOVEMBER, 2019



A member firm of ANDERSENGLOBAL

What's Inside?

Direct Tax 02

- NR's services to Indian subsidiary de hors imparting of know how - not 'royalty'
- ITAT Delhi: Supplies to telecom operators in India, not taxable sans PE
- No TDS on payments to foreign affiliates for providing audit, advisory services
- AAR: Revenue from offshore supply, non-taxable

Transfer Pricing 11

- ITAT adopts cup method, accept comparable data from the customs department's database for benchmarking imports/exports
- ITAT Directs aggregation approach for benchmarking Royalty transaction; Reject CUP absent comparable cases

Regulatory 16

- Amendment in appointment of Director's rules
- Brief summary of FEMA Amendments

GST 20

- CBIC clarification issued on Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019
- Other pertinent changes in GST law

Compliance Calendar 24

- Direct Tax
- GST
- Regulatory

DIRECT TAX

1. NR's services to Indian subsidiary de hors imparting of know how - not 'royalty'

Outcome - In favour of the assessee
Category - Services in the nature of Royalty/FTS

Background

Mumbai ITAT ruled that the payments received by Van Oord Dredging and Marine Contractors BV (assessee) on account of provision of management support services to its Indian Subsidiary (VOIPL) shall not be taxable as royalty as per Article 12 of the India-Netherlands DTAA in the absence of transmission of know how. It was held that none of the services provided involved any element of imparting of "knowhow" nor was there a transfer of any knowledge, skill or experience to fall within the ambit of royalty.

Brief Facts and Contentions

- The assessee company (incorporated in Netherlands), provided business support services to VOIPL under a Management Support Agreement (MSA), in the nature of on-going assistance and support in the field of information technology, operation, quality, health and safety, estimating and engineering, marketing, administration, personnel, legal, etc.

- The assessee charged money for provision of such services and contended that the payment was not taxable as FTS under the India-Netherlands DTAA, since know-how or knowledge was not 'made available' to VOIPL. Further, it was asserted that the amount paid to the assessee was pure allocation of cost, without any mark-up, not taxable as FTS.

- The Assessing Officer (AO) ruled against the assessee and held that the payments made by VOIPL to the assessee were for the use of information concerning 'industrial, commercial and scientific experience' in India, and taxed the payments as Royalty.

- On further appeal to the CIT(A), the action of the AO was confirmed.

- Aggrieved, the assessee appealed before the Mumbai ITAT.

Mumbai ITAT's Judgement

Relying on the decision of the coordinate bench (for A/Y 2009-10), the ITAT ruled in favour of the assessee and elucidated that:

- To qualify as payment towards information concerning industrial, commercial or scientific experience, person must provide "know how" to the recipient.
- In case of industrial, commercial or scientific experience, if services are being rendered simply as an advisory or consultancy then it cannot be reckoned as "royalty".
- 'Advisory' or 'assistance' does not imply 'imparting of the skill or experience' to other.
- A person rendering the services from his own knowhow is only imparting his conclusion based on his own skill and experience, i.e. all that he imparts is a conclusion or solution that draws from his own experience, which cannot be treated as 'know how'
- For being regarded as "royalty" there has to be alienation or use of or right to use of any know how and without any transfer of any knowledge, experience or skill, it cannot be termed as "royalty".
- If the services have been rendered de-hors the imparting of know how or transfer of any knowledge, experience or skill, then such services will not fall within the ambit of 'Royalty'.
- The assessee merely provides services like help-desk, trouble-shooting, project check-list, safety and inspection planning, website maintenance, printing, publishing brochures, conducting internal audit, preparing bids and plans and the like, having no element of imparting of know-how.

Nangia Andersen's Take

The ITAT has relied on the ruling of the coordinate bench, which had meticulously demarcated as to what can and what cannot be classified as 'royalty'. It has been made clear that to qualify as 'royalty', there must be transfer of right to use 'knowhow'. Further, it has been explained that business support services do not fall within the ambit of 'royalty' as defined in Article 12 of the DTAA and that payment received by a taxpayer on account of reimbursement of expenses under a service agreement, shall not be taxable as Royalty.

Source: ITA No. 4136/Mum/2016 for (AY 2010-11)

2. ITAT Delhi: Supplies to telecom operators in India, not taxable sans PE

Outcome - In favour of the assessee
Category - Constitution of PE

Background

The Delhi ITAT ruled in favour of Siemens Mobile Communications SPA (assessee, incorporated in Italy) for AYs 1998-99 to 2002-03, holding that offshore supply of microwave transmission equipment by assessee to telecom operations in India cannot be brought to tax in the absence of Permanent Establishment (PE) in India. It was held that, installation & commissioning services performed by assessee's sister concern in India (SPCNL), pursuant to independent contracts entered into with the telecom operators did not constitute PE in India.

Brief Facts and Contentions

- The assessee was engaged in the business of manufacture and supply of microwave transmission equipment and during the year under consideration, supplied the same to independent Indian Telecom operators.

- The assessee also entered into an agreement with SPCNL, under which, SPCNL was required to carry out marketing and promotional activities, call for tenders; enable commercial, technical, administrative and legal support; etc. for which, it was remunerated on arm's length basis.

- SPCNL entered into independent contracts with the telecom operators in India for undertaking installation, testing and commissioning of the components supplied to them by the assessee. The Revenue contended that such services led to the constitution of a PE in India, making profits attributable to offshore supplies, taxable.

- The Revenue also alleged that the Liaison Office (LO) of the assessee had assisted in the negotiation and signing of the contracts.

- The Revenue claimed that the role of the assessee was not limited to supply of components from abroad and that SPCNL was an agent of the assessee because of the fact that it was entrusted with the responsibility of testing defects and ensuring that system was fully functional. Further, engagement of SPCNL by the telecom operators was dependent and conditional on supply of components by the appellant.

- Further, as the employees of the appellant were constantly visiting India for the purpose of negotiation and signing of contracts, the Revenue argued that SPCNL constituted a DAPE of the assessee in India and that SPCNL did not have the authority to conclude contracts,

ITAT Judgement

The ITAT ruled in favour of the assessee, observing that:

- SPCNL was being remunerated separately by the telecom operators, which was duly offered to tax in India by it. Hence, SPCNL should not be considered a fixed place, from which business of the appellant was wholly or partly carried out.

- In accordance with the ruling of Special Bench in case of Motorola Inc. , LO does not tantamount to existence of a PE in terms of Article 5 of the DTAA.

- The role of the assessee was limited to mere supply of hardware components directly from Italy in such a manner that sales stood concluded, title transferred and consideration received outside India. The assessee was neither responsible for, nor undertook installation, testing and commissioning. This was undertaken by the telecom operators themselves or was outsourced to SPCNL independently by way of separate contracts between SPCNL and the telecom operators. Thus, SPCNL cannot be regarded as installation PE/ DAPE of the assessee in India.

- ITAT opined that the activities performed by employees who visited India were not revenue generating activities. Moreover, since no expatriate employees visited in the subsequent years, issue of fixed PE in any case would also not arise.

- ITAT relied on the CBDT circular , which states that no liability will arise to a non-resident where transaction of sale is on principal-to-principal basis.

Nangia Andersen's Take

The Delhi ITAT has studied all the standpoints of the case precisely to deliver a fair judgement. It has been established that companies shall not be liable to pay tax on a transaction which involves merely supply on principal-to-principal basis. Moreover, where a sister concern of an entity performs tasks independently by way of separate contracts, it cannot be regarded as a PE of the foreign entity. It has also been stipulated that entities shall not be liable to pay tax on income that arises from operations conducted outside India.

Source: ITA No. 3012/DEL/2003 [AY 1998-99]

3. No TDS on payments to foreign affiliates for providing audit, advisory services

Outcome - In favour of the assessee
Category - Retrospective amendment doesn't create TDS liability

Background

Concurring with the ITAT's order, Bombay HC deleted Sec 40(a)(i) disallowance for non-deduction of TDS on professional fees paid by KPMG India (assessee) to its foreign affiliates and other service providers outside India (i.e. in US , UK, the Netherlands, China, Sweden and more) during AY 2008-09. In absence of a Permanent Establishment (PE) in India, payments made to the service providers would not be subject to tax in India, in view of the DTAA, and consequently the occasion to deduct tax at source would not arise. Further, it was held that a retrospective amendment cannot cast an obligation to deduct tax, when not in force at the time of payment.

Brief Facts and Contentions

- The assessee was engaged in the business of taxation, audit advisory and other consultancy services. During A/Y 2008-09, it paid fee for professional services to various service providers outside India (i.e. in US , UK, the Netherlands, China, Sweden and more), without deduction of tax at source. The AO thus disallowed the expense under Section 40(a)(i) of the Income Tax Act (the Act).

- The assessee contended that, the payments made to service providers for services rendered outside India, were governed by the DTAA between India and the respective countries, hence, not taxable in India.

- On appeal, the CIT (A) deleted the disallowance, holding that, the amounts paid to the various service providers in various countries (except China) were governed by the DTAA.

- On further appeal, the ITAT held that none of the services had the attributes of making available of any technical knowledge to respondents in India. It further held that payments would be outside the scope of taxation in India as none of the service providers had PE in India and consequently covered by the DTAA between the respective countries.

- The ITAT also observed that there was no obligation to deduct tax at source, on the basis of deemed income under section 9(1)(vii) of the Act, as even though the amendment was brought about by retrospective effect, such obligation was absent at the time of making payment to the service providers.

- The High Court then took up the matter for consideration.

High Court Judgement

The High Court, ruling in favor of the assessee, observed the following:

- In absence of challenge by the revenue, the issue regarding the applicability of the DTAA stands in favor of the assessee. Moreover, since the revenue accepted that the no income arose in the hands of the service providers, in accordance with the DTAA, the occasion to deduct tax at source would not arise and consequently, disallowance under 40(a)(i) would also no arise.

- A retrospective amendment cannot cast an obligation to deduct tax when not in force at the relevant time (when payment was made).

- A party cannot be called upon to perform an impossible act, i.e. to comply with the provisions, which were not in force at the relevant time.

Nangia Andersen's Take

The judgement highlights that no obligation can be cast on the taxpayers in future, in absence of specific provision at the time of execution of a transaction. Further, the occasion to deduct tax at source would not arise in the absence of any taxable income in the hands of service providers. Judgements like these instill faith of the taxpayers in the law, and confirm that benefit shall not be denied to the genuine taxpayers.

4. AAR: Revenue from offshore supply, non-taxable

Outcome - In favour of the assessee
Category - Constitution of PE/ taxability of offshore supply of equipment

Background

The Delhi Bench of Authority for Advance Rulings (AAR) ruled that the amount received/receivable by a Japanese company, Nippon Steel Engineering Co. Ltd. (the applicant) under equipment supply contract awarded by JSW Projects (JSW/ purchaser) for offshore supply of equipment is not taxable in India. Further, the AAR also rejected Revenue's allegation that the applicant had a Fixed Place PE/ Dependent Agent PE (DAPE) in India.

Brief Facts and Contentions

- The Japanese applicant was engaged in the business of steel & environmental plants. JSW and the applicant entered into two contracts for supply of equipment for Japan portion and for China portion.
- The contracts provided that carriage of equipment from port of shipment to Indian port shall be the responsibility of the purchaser. Additionally, separate contracts were also entered into by the applicant with JSW for supply of drawings, offshore training, and supervision services.
- Based on these facts, the applicant raised a question about the taxability of the amounts received/receivable by the applicant under the contract of supply.
- The applicant contended that since the property & title in the equipment passed outside India, the payment was received in foreign currency outside India through an irrevocable letter of credit; no income accrued or arose in India in respect of the offshore supply of equipment.
- Revenue argued that all the different contracts were related and that it was a case of composite contract linked to an already admitted PE in India, and hence the activities related to offshore supply were to be taxed in India.
- The Revenue also contended that the applicant constituted a DAPE in India in accordance with Article 5 of the India-Japan DTAA on account of the fact that the applicant's employees had visited India for site surveys, protracted negotiations, data collection, signing of contract etc.

AAR Judgement

The AAR ruled in favour of the applicant and observed that:

- The title was transferred on FOB basis and the risks associated with transit/ liquidated damages/ delay in delivery etc., were solely of the purchaser. Moreover, the invoice as well as the bill of entry was in the name of JSW and not on applicant, therefore the title & property in the equipment stood transferred to the purchaser at the foreign port itself. Accordingly, AAR upheld the applicant's contention that the supply of equipment was concluded outside India.

- The applicant had not intentionally split the contract upon noting that the applicant had requested for splitting the contract in respect of supply of equipment from two different countries i.e. Japan and China only.

- When the contract is required to be signed by a company, it is imperative that a responsible person of the company would have to sign the contract on its behalf, and such a person cannot be held as a dependent agent of the applicant.

- Only that portion of the income which is attributable to operation in India, would be deemed to accrue or arise in India, income arising from operations carried out of India would not be chargeable to tax in India.

- As per the scope of the contract, the purchaser was responsible for providing data with respect to drawing and other information, hence; there cannot be a question of involvement of FTS.

- The applicant did not have a Fixed Place PE in terms of Article 5 of India- Japan DTAA.

Nangia Andersen's Take

The AAR judgement highlights the fact that only that part of the income, which can be attributed to operations in India, would be deemed to accrue and arise in India, thus taxable. Therefore, companies shall not be liable to pay tax on income that arises from operations conducted outside India. Further, the AAR has explained that the employees of the companies authorised for signing contracts, cannot be held as dependent agents for constituting PE.

Source: AAR No 1303 of 2012

TRANSFER PRICING

1. ITAT adopts cup method, accept comparable data from the customs department's database for benchmarking imports/export

Outcome - In favour of taxpayer
Category - Concept of 'MAM' & 'selection of comparables'

Facts of the Case

- Rohm and Haas India Pvt. Ltd ("the taxpayer") was engaged in manufacturing specialty chemicals, distribution of chemicals and sales promotion activities.

- During AY 2010-11, taxpayer has undertaken international transactions of import of raw materials and export of finished goods with its AEs. Further, the taxpayer has adopted aggregation approach to benchmark these transactions using Cost Plus Method ("CPM"). The taxpayer had adopted the similar approach for such transactions in AY 2007-08 to AY 2009-10 & the Transfer Pricing Officer ("TPO") had accepted the same during the course of assessment proceedings.

- During the course of assessment proceeding for AY 2010-11,
  - TPO rejected the CPM as Most Appropriate Method ("MAM") on the ground that the taxpayer is a loss making concern & instead adopted Transaction Net Margin Method ("TNMM").

  - TPO used profit level indicator of OP/OR under TNMM and rejected comparables adopted by the taxpayer and thereby selected new set of comparables to benchmark the transaction. He made an adjustment of INR 37 cr. approx. **The TPO did not disturb the ALP determination of any other transaction.**

- Aggrieved by the adjustment, the taxpayer approached Dispute Resolution Panel ("DRP"). The assessee submitted additional evidences for application of Controllable Uncontrolled Price ("CUP") method using Independent Chemical Information Service ("ICIS") prices instead of CPM and TNMM before the ld. DRP. This was filed without prejudice to its claim that CPM should be adopted as MAM.

- The TPO and DRP both disregarded the additional evidences provided by Assessee and upheld the approach followed by the TPO. However, the DRP reduced the adjustment to INR 35 cr. approx. Aggrieved by the order of DRP, taxpayer filled an appeal before the Hon'ble Income Tax Appellate Tribunal ("ITAT").

ITAT'S Ruling

The ITAT made the following observations:

Losses during AY 2010-11

Based on the submission of the taxpayer, the ITAT observed that the assessee had incurred losses during the year on account of commercial reasons and not on account of import transactions from its AEs. Thus, dismissed the rejection of CPM as MAM by the TPO in the instant case.

Adoption of MAM

ITAT observed that the assessee had given up the claim of CPM before the ld. DRP and had prayed for adoption of CUP as MAM as the comparable data was available for almost 68% of the total value of import transactions using ICIS software.

Further, the taxpayer has also filed additional evidence by producing data from TIPS Data Base maintained by the Customs Department, comparing the prices of import carried out by the assessee vis-à-vis prices on the relevant date or nearer to the date of transactions and contended that the same covers even higher percentage (94.69%) of total value of import transactions from the AEs.

In the light of the above, the ITAT held that since, the substantial amount of transaction gets covered using TIPS database as CUP, the entire additional evidence filed by the assessee seems appropriate to restore the entire issue to the file of the Ld. AO with following directions:

- CUP being a direct method shall be adopted as MAM instead of a traditional profit method such as RPM and TNMM.
- TIPS Data Base maintained by the Customs Department should be accepted as a valid database.
- The revenue cannot do cherry picking of those transactions which are favouring them and ignore those transactions that are detrimental to them while benchmarking the transactions of the assessee with comparable cases.

Nangia Andersen's Take

The instant ruling reiterates the fact that "the revenue cannot do cherry picking of those transactions which are favoring them" Further, ITAT accepted the adoption of CUP being the most direct method for benchmarking the transactions instead of a traditional profit method such as RPM and TNMM. Also, TIPS database maintained by customs departments has been adopted as a valid database.

Such rulings are a welcome change for as they provide more clarity to the taxpayer to identify the most appropriate method and enhances the confidence of the taxpayer against such matters of prolonged litigations.

2. ITAT Directs aggregation approach for benchmarking Royalty transaction; Reject CUP absent comparable cases

Outcome - In favour of taxpayer
Category - Royalty, Aggregation of Transactions

Facts of the Case

- SNF India Private Limited ("the taxpayer") is a 100% subsidiary of SPCM SA, France, engaged in business of manufacture and sale of water-soluble polymers.
- During the Year under consideration, the taxpayer entered into various international transactions pertaining to purchase of raw materials and payment of Royalty with its AE's. The taxpayer benchmark the same by aggregation approach and selected TNMM as MAM in its TP study.
- During the course of assessment proceedings, the TPO contended that the Royalty transaction cannot be aggregated with other international transactions for benchmarking purposes. Therefore, determined the ALP of Royalty at NIL by holding that the taxpayer did not receive any benefit for payment of Royalty to its AE.
- Further, the TPO adopted CUP as the MAM for payment of Royalty transaction. Consequently, proposed an upward adjustment.
- Aggrieved, the taxpayer filed an appeal before the ["CIT (A)"]. The CIT (A) upon review of evidences concluded that the taxpayer has received benefits in nature of technical support provided by AE and that TPO was not justified in determining the ALP of royalty at NIL.
- Furthermore, CIT (A) upheld that CUP method cannot be applied as the MAM since the TPO could not identify any comparable data to benchmark payment of royalty under CUP and thus upheld TNMM as the MAM.
- In view of the above, the revenue filed an appeal before ITAT.

ITAT'S Ruling

The ITAT made the following observations:

- The Tribunal observed that the taxpayer has derived benefits from technical information provided by AE based on the correspondence and e-mails submitted by Taxpayer. Further, ITAT confirmed that the technical knowledge and information

shared by AE from time to time with the taxpayer was crucial for taxpayer's manufacturing process. Based on the evidence, ITAT notes that TPO is obliged to follow any one of methods prescribed in section 92C of the Income tax Act and cannot adopt benefit test as method to benchmark the transaction.

- Further, ITAT noted that though TPO has selected CUP method as MAM for benchmarking the royalty transaction but TPO did not bring any comparable cases. Therefore, by adopting CUP method without the support of any comparable cases would be defective and thereby ITAT rejected CUP as the MAM. the file of the Ld. AO with following directions:

- In view of this, ITAT after places reliance in case of **Frigoglass India Private Limited and Sony Ericsson Mobile Communications India Pvt. Ltd.** held that the manufacturing activity and royalty payments are inter-dependent and interrelated transaction and thus the aggregation approach is justified.

- In view of the aforementioned observation, ITAT upheld the order of the CIT (A) by stating that the determination of royalty at Nil is unjustified and held that the MAM for benchmarking the said transaction shall be TNMM by aggregating all the transaction including payment of royalty. Thus, ITAT hold that the adjustment proposed by the TPO is not warranted and addition is to be deleted.

Nangia Andersen's Take

The issue of benchmarking of royalty transactions is one of the contentious issues in the battleground of TP litigation. Over the years, the lower level of tax authorities alleging that the benefit test is required to be satisfied while justifying payment for royalty/intra-group services and adopted a distinctive approach in determining the ALP of the transaction.

However, upper level of tax authorities in various rulings clarified that if taxpayer substantiate the need for service received based on the evidences or documentation and benefits of service received theron, then tax authorities cannot question on the geniuness of the transaction if it is clear that the availing of such service is a commercial/business decision of the taxpayers.

Therefore, the aforesaid ruling provide insightful facts to the taxpayers that the benefit test cannot be the sole method for benchmarking of royalty transaction and it is the duty of the tax authorities to select one of the prescribed methods for the purpose of benchmarking;.

Source: SNF (India) Pvt Ltd [TS-927-ITAT-2019(VIZ)-TP]

REGULATORY

1. Amendment in appointment of Director's rules

Section 150 of the Companies Act, 2013 provides for the manner of selection of independent directors and maintenance of data bank of Independent Directors. The said provision empowers the Ministry of Corporate Affairs ('MCA') to prescribe the manner and procedure for selection of Independent Directors as well as to notify any authority to maintain such data and put the same on its website. MCA through notification dated October 22, 2019 has amended Companies (Appointment and Qualification of Directors) Rules 2014.

In terms of the aforesaid rule,

- Any individual who has been appointed as an independent director in a company, or who intends to be appointed as an independent director in a company, shall before such appointment, apply online to the Indian Institute of Corporate Affairs ('IICA') for inclusion of his name in the data bank for a period of one year or five years or for his life-time. Further, any individual, including an individual not having DIN, may voluntarily apply to the institute for inclusion of his name in the data bank.

- Every individual whose name is included in the data bank shall file an application for renewal for a further period of one year or five years or for his life-time, within a period of thirty days from the date of expiry of the period up to which the name of the individual was applied for. Failing which, the name of such individual shall stand removed from the data bank of the institute.

- Every individual whose name is so included in the data bank, shall pass an online proficiency self-assessment test conducted by the IICA within a period of one year from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute.

- The individual who has served for a period of not less than 10 years as on the date of inclusion of his name in the databank as director/key managerial personnel in a listed public company or in an unlisted public company having a paid-up share capital of INR 10 crore or more shall not be required to pass the online proficiency self-assessment test.

  This amendment is effective from December 01, 2019.

2. Brief summary of FEMA amendments

The Ministry of Finance has issued a notification appointing the date on which provisions of Section 139, Section 143 (i) and Section 144 of the Finance Act 2015 relating to amendments under FEMA shall come into force from 15th October 2019. The notification brings in a major re-shuffle of Powers relating to Making Rules for specific Capital Account Transactions, (Non-Debt Instruments) under the Foreign Exchange Management Act 1999, ('FEMA'). By virtue of the said notification, Power to issue Rules with regards to Capital account transactions being Non-Debt Instruments has been taken away from the Reserve Bank of India and handed over to the Central Government through Ministry of Finance, Department of Economic Affairs ('DEA'). The Reserve Bank of India (RBI) will continue to govern capital account transactions involving debt instruments. The intention is to enable Central Government to exercise control on capital flows as equity.

Further, the Ministry of Finance, pursuant to Notification dated October 16, 2019, has determined the list of instruments that will be regarded as debt instruments and non-debt instruments.

Ministry of Finance vide notification No. So 3722 ('E) dated 16th October 2019 has introduced a classification of Debt and Non-Debt Instruments under powers conferred under section 6(7) of FEMA 1999.

As per the said notification the following Instruments shall be considered as non-debt instruments, namely:-

- all investments in equity in incorporated entities (public, private, listed and unlisted);
- capital participation in Limited Liability Partnerships (LLPs)
- all instruments of investment as recognised in the FDI policy as notified from time to time;
- investment in units of Alternative Investment Funds (AIFs) and Real Estate Investment Trust (REITs) and Infrastructure Investment Trusts (InVITs);
- investment in units of mutual funds and Exchange-Traded Fund (ETFs) which invest more than fifty per cent in equity;
- junior-most layer (i.e. equity tranche) of securitisation structure;
- acquisition, sale or dealing directly in immovable property;
- contribution to trusts;
- depository receipts issued against equity instruments.
- All other instruments will be 'non-debt instruments'.

While the following Instruments shall be considered as debt instruments, namely:-

- Government bonds
- corporate bonds

- all tranches of securitization structure which are not equity tranche
- borrowings by Indian firms through loans
- Depository receipts whose underlying securities are debt securities.

Further, all other instruments which are not specified above shall be deemed as debt instruments.

On 17th Oct, 2019, DEA, Ministry of Finance issued the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 in supersession of Foreign Exchange Management (Transfer of issue of Security by a Person Resident Outside India) Regulations 2017 and Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) regulations, 2018.

These Rules have been issued under powers conferred to it under clause (aa) and (ab) of sub-section 2 of section 46 of foreign exchange management act 1999 and in supersession of Foreign Exchange Management (Transfer and Issue of Securities by Person Resident outside India) Regulations, 2017.

Under these rules there is a clear distinction between the Debt and Equity Instruments and the rules have been laid down for issue of equity instrument in particular to a person resident outside India.

RBI vide notification No. FEMA 396/2019 has introduced FEM (Debt Instruments) Regulations, 2019 in exercise of its powers under Section 6(2)(a) and Section 47 of Foreign Exchange Management Act, 1999 and in supersession of Foreign Exchange Management (Transfer and Issue of Securities by Person Resident outside India) Regulations, 2017. The said notification lays out regulations including general conditions, restrictions, permission requirements for issue of Debt Instruments to a person resident outside India.

Reserve Bank of India has also issued vide notification No. FEMA 395/2019, relating to mode of payment and reporting of Non- Debt Instruments in exercise of powers granted by the Central Government to the RBI through Foreign Exchange Management (Non-Debt Instruments) Rules, 2019. Under these regulations, various instructions on Mode of payment and Remittance of sale proceeds has been issued for various category of investors and investing into different category of instruments.

GST

1. CBIC clarification issued on Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

The gist of the important clarifications is given as under:

- A view was emerging that in case the Final Audit Report (FAR) has been issued, it would be considered that the audit is not pending and the benefit of the said scheme would not be available.

  A clarification in this regard is issued, that till the time an audit does not culminate in a Show Cause Notice, it is treated as pending. Therefore, cases where FAR has been issued on or before 30 June 2019, are eligible for relief under SVLDRS as the tax demand has been quantified;

- It is clarified that declaration under voluntary disclosure category must be accepted without recourse to determination of eligibility as the Scheme provides ample safeguards for taking suitable action in case of false declarations;

- Clarification has been provided to include under the said scheme, cases wherein a person has filed the Service Tax Returns and deposited the tax dues in full but wants to apply for interest on the late deposit of the tax dues. It shall also cover cases of arrears of tax liability admitted under returns filed on or before 30 June 2019;

- It was earlier clarified vide Circular No. 1072/05/2019-CX dated 25 September 2019 that a separate declaration is to be filed for each return filed but duty not deposited. Now, it is clarified that a single declaration may be filed by persons in case the tax liabilities are pending for multiple returns;

- There are multiple cases where the assets of a tax defaulter are taken over by an Asset Reconstruction Company (ARC) and the department asks the ARCs to pay the outstanding dues or in cases where lessees are challenging applicability of service tax on rented immovable properties. It is clarified that such persons are allowed to file the declaration under the said scheme and avail the benefit if they comply with remaining conditions like withdrawal of pending cases etc.

- Earlier, persons who have filed an appeal after 30 June 2019 were not eligible to apply for the said scheme. It is now clarified that such person can file a declaration provided, such appeal is withdrawn and an undertaking is given to the department in terms of Para 2(viii) of circular No. 1072/05/2019- CX.

2. Other pertinent changes in GST law

Filing of GSTR-9 (Annual Return) optional for small taxpayers for FY 2017-18 and 2018-19:

- In case turnover of the registered person is less than 2 crores in a FY then filing of Form GSTR-9 is not mandatory for said registered person for the FY 2017-18 and FY 2018-19. Further, it shall be deemed that said return has been filed in case no return has been filed till due date.

Input Tax Credit ('ITC') to the extent of 20% for details not furnished by supplier in its GSTR-1

- The registered person can avail ITC in respect of invoices or debit notes which are not reflecting in form GSTR-2A, only to the extent of 20% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers in their form GSTR-1;

Extension of due date of filing TRAN-01 and TRAN-02:

- The time limit of filing TRAN-01 and TRAN-02 for the period July 2017 to March 2018 is extended till 31 December 2019 and 31 January 2020 respectively for registered persons who were not able to submit said form on the portal **on account of technical difficulties.**

Reverse Charge Mechanism ('RCM'):

- Payment of GST shall be made on securities lending services under RCM at 18% and it is clarified that GST on said services period prior to RCM shall be paid on Forward Charge basis; and

- Liability of GST @ 5% is to be discharged through RCM on renting of vehicles, registered person other than body corporate (LLP, proprietorship) when services provided to body corporate entities.

Law and Procedure related changes:

- Introduction of New Return filing system from April 2020 instead of earlier proposed October 2019; and

- Taxpayer is eligible to file a refund application for a period and category under which a NIL refund application has already been filed.

Exemption/ Changes in GST rates/ ITC Eligibility Criteria:

- GST rate on Hotel tariffs has been proposed to be reduced as per below schedule:

Hotel Tariff (INR) per day	Current GST Rate	Proposed GST Rate
Below INR 1,000	Nil	Nil
Above INR 1,000 to INR 2,500	12%	12%
Above INR 2,500 to INR 7,500	**18%**	**12%**
Above INR 7,501 and more	28%	18%

- **Job Work Service :** Reduction in rate of GST from 5% to 1.5% on supply of job work services in relation to diamond and reduction in rate of GST from 18% to 12% in relation to supply of machine job work (except bus body building); and

- **Goods for petroleum operations :** A rate of 5% is proposed on specified goods for petroleum operations under Hydrocarbon Exploration Licensing Policy.

Exemption of Services:

- Warehousing services by way of storage or warehouse of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres;

- Transportation: Extension of conditional exemption of GST on export freight by air or sea till 30 Sept 2020; and

- Intermediary Services: Exemption on Intermediary services provided to a supplier or recipient of goods when both supplier and recipient are located outside the taxable territory.

Miscellaneous:

- Aerated drink manufacturers shall be excluded from composition scheme;

- Reduction in cess to 1% (petrol) and 3% (diesel) on passenger vehicle carrying 10-13 persons; and

- Option to pay GST at rate of 18% is provided on transaction value of disposal of specified goods for petroleum operations (on which concessional GST rate of 5% was paid at the time of original supply) provided that the goods are certified by Directorate General of Hydrocarbons (DGH) as non-serviceable.

COMPLIANCE CALENDAR

Due Date	Particulars
7th November 2019	Payment of TDS - For the period 1st October 2019 to 31st October 2019
	Payment of Equalisation Levy - For the period 1st October 2019 to 31st October 2019
14th November 2019	Issuance of TDS certificate in Form 16B for tax deposited u/s 194-IA (TDS on sale of immovable property) in the month of September'2019- tax deduction in September'2019
	Issuance of TDS certificate in Form 16B for tax deposited u/s 194-IA (TDS on sale of immovable property) in the month of September'2019- tax deduction in September'2019
15th November 2019	Furnishing quarterly TDS certificate (in respect of TDS deducted other than salary) for the Quarter ending 30th September,2019
30th November 2019	Payment and furnishing of challan-cum- statement via Form 26QB in respect of tax deducted under section 194-IA (TDS on sale of immovable property) in the month of October,2019
	Payment and furnishing of challan-cum-statement (Form 26QC) in respect of tax deducted under section 194-IB in the month of October,2019
	Furnishing of Annual Return of income and Audit Report under section 44AB for Assessment Year 2019-20 in case of Assessee which is required to submit a report under Section 92E pertaining to international or specified domestic transactions.
	Furnishing a report in Form 3CEB in respect of international transaction and specified domestic transaction.
	Furnishing a report in Form No. 3CEAA by a constituent entity of an international group for the accounting year 2018-19.

Due Date	Particulars
30th November 2019	Furnishing Country-By-Country Report in Form No. 3CEAD by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, for the accounting year 2018-19.
	Date to exercise option of safe harbour rules for international transaction by furnishing Form 3CEFA and for specified domestic transactions by furnishing Form 3CEFB
	Furnishing a statement of income distributed by business trust to unit holders during the financial year 2018-19. This statement is required to be filed electronically to Principal CIT or CIT in form No. 64A
	Application in Form 9A for exercising the option available under Explanation to section 11(1) to apply income of previous year in the next year or in future (if the Assessee is required to submit return of income on November 30, 2019)
	Furnishing a statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or 11(1) (if the Assessee is required to submit return of income on November 30, 2019
	Furnishing a statement 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 due date of submission of return of income is November 30, 2019).

Return Form	Particulars	Return to be furnished by	Periodicity	Due Date
GSTR- 1	Outward supplies return	Registered person	Monthly/ Quarterly	11th of the succeeding month/ 31st Jan'20 (for the quarter Oct'19 –Dec'19)
GSTR- 3B	Summary of inward and outward supplies and payment of tax	Registered person	Monthly	20th of the succeeding month
GSTR- 6	ISD return	Input Service Distributor	Monthly	13th of the succeeding month
GSTR- 7	TDS return	Person deducting TDS	Monthly	10th of the succeeding month
GSTR- 8	TCS return	E-Commerce Operators	Monthly	10th of the succeeding month
GSTR- 9	Annual return	Registered person	Annual	30th November' 2019 (for the Financial year 2017-18)
GSTR-9C	Audit report and reconciliation statement	Registered person	Annual	30th November' 2019 (for the Financial year 2017-18)

S.No.	Compliance	Due Date
1	Filling of E-Form AOC-4 (Financial Statements)*As per extended timelines.	30/11/2019
2	ECB-2, Monthly reporting of ECB for the month of October	07/11/2019

ABOUT US

Nangia Andersen LLP is a premier professional services organization offering a diverse range of Entry strategy, Taxation, Accounting & Compliances and Transaction Advisory services. We are an Andersen Global tax consulting and Advisory firm in India. As a part of Andersen Global we have reach to more than 172 offices globally having presence in more than 71 countries. In India, Nangia Andersen LLP has a PAN-India coverage with offices in Noida, Delhi, Gurugram, Mumbai, Dehradun, Bengaluru, Chennai and Pune. Nangia Group has been in existence for around 40 years and has been consistently rated as one of the best tax and regulatory advisors in India.

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. The business and tax landscapes have changed dramatically, and the pace and complexity of change continues to increase. We can assist you navigate this shifting landscape.

OUR LOCATIONS

NOIDA
(Delhi NCR - Corporate Office) A-109,
Sector 136, Noida – 201304
T: +91 120 5123000

DELHI
(Registered Office) B-27, Soami
Nagar, New Delhi-110017 | India
T: +91 120 2598000

GURUGRAM
812-814, Tower B, Emaar Digital
Greens Sector 61
Gurugram, Haryana, 122102
T: +0124-4301551/1552/1554

MUMBAI
11th Floor, B Wing, Peninsula
Business Park, Ganpatrao Kadam Marg,
Lower Parel, Mumbai 400013, India
T: +91 22 61737000

CHENNAI
Office No. 118, 31-A Cathedral Garden
Road, Nungambakkam, Chennai 600034
T: +91-44-40509200

BENGALURU
Embassy Square, #306, 3rd Floor, 148
Infantry Road Bengaluru,
Karnataka 560001 | T: +91 80 2228 0999

PUNE
Office number 3, 1st Floor, Aditya Centeegra,
Fergusson College Road, Next to Mantri
House, Pune – 411004, India

DEHRADUN
First Floor, “IDA” 46 E. C. Road,
Dehradun – 248001, Uttarakhand.
T: +91 135 271 6300/301/302/303

Please get in touch with us at :
query@nangia-andersen.com | www.nangia-andersen.com