Nangia Andersen LLP

NEWSLETTER
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What's Inside?

DIRECT TAX

1. ITAT Delhi: Hitachi Singapore's Liaison Office constitutes PE in India

Outcome - Partly in favour of Revenue
Category - Constitution of PE in India

Background

The Delhi ITAT held that the Liaison Office (LO) of Hitachi High Technologies Singapore Pte Ltd (the Assessee) constituted a Permanent Establishment (PE) in India, as the activities carried by it in India were not preparatory/auxiliary in nature.

Brief Facts and Contentions

- The Assessee established an LO in India for rendering preparatory and auxiliary services including market research and liaison activities.

- Based on the Survey conducted by the Revenue Authorities in 2008, in which statements of employees and email exchanges with tax consultant were logged, the Assessing Officer (AO) passed a draft assessment order, holding that the LO was engaged in negotiating contracts for the Assessee in India and that its role was not limited to undertaking preparatory and auxiliary activities. Accordingly, the LO was held to constitute a PE in India.

- The income in the hands of the LO (i.e. the PE) was computed by applying global profit margin to the sales in India and attributed 50% thereof to the PE. Total addition of INR 7.2 crores was made.

- The DRP upheld the draft order, based on which final order was passed by the AO. The Assessee then carried the matter before the ITAT, where it was set aside and remitted back to the DRP, with directions to pass a speaking order.

- In the re-adjudication proceedings, the DRP assessed the total income of all the year as INR 123.16 crores.

- Aggrieved, the Assessee once again approached the ITAT alleging that the DRP had exceeded the directions of the ITAT while re-adjudicating and that it did not have the power to put the Assessee in a situation worse than before. Further, the LO did not constitute a PE in India, therefore, no profit should be attributed to it. To fortify its stand the Assessee also contended that no violation was found by the RBI with respect to its activities.

ITAT's Ruling

- **DRP did not exceed the directions of the ITAT**
  The ITAT observed that during re-adjudication the DRP modified the method of profit attribution to the PE resulting in enhancement of addition. It held that, the DRP had simply followed the directions of the ITAT to assist the AO in determining the issues raised previously and in doing so, the DRP had not done any enhancement.

  It further elucidated that the DRP is a continuation of assessment proceedings, where the DRP acts as a corrective mechanism to guide the AO for making error-free assessments. It is not an appellate forum unlike the CIT(A).

- **Assessee cannot be left worse off than before**
  ITAT observed that the total assessed income of the assessee had significantly increased due to filing of appeal and re-adjudication of the matter and held that in all fairness, the Assessee should not be left worse off than it was before filing the appeal. It thus restricted the additions to 7.2 crores, as was previously held.

- **LO constituted PE in India**
  Based on the statements of the employees, the ITAT noted that the LO was directly participating in core activities of trading business of the assessee which are not of preparatory or auxiliary nature and therefore held that, the Assessee's LO constituted its PE in India.

  The ITAT further stipulated that unless the fixed place of business (LO) was being used only for the purpose of advertisement, supply of information, scientific research or similar activities, which have a preparatory and auxiliary character, it could not fall in the PE exclusion clause.

  It was also explained that whether the assessee violated the conditions of RBI or FEMA is not relevant in determining the LO as PE in India.

- **Profit allocation**
  The profit allocation should be done by applying the Transactional Net Margin Method as the LO was performing routine and limited functions and was operating in a risk-free environment,

Nangia Andersen's Take

Notably, the ITAT, in this case has relied on the statements of the employees and the emails between the Head office and the LO, to stipulate that the LO was involved in commercial activities. This establishes the fact that written communication has evidentiary value and can be used against assesses for litigation purposes. Further, it has also been maintained that a taxpayer cannot be put in a worse position on account of having carried the matter in appeal.

2. Link charges and shrink wrapped software not 'Royalty'; associated service fees not 'FTS' under the India-USA tax treaty

Outcome - In favour of Assessee
Category - - Taxability of link charges and shrink-wrapped software as Royalty

Background

The Income Tax Appellate Tribunal, Mumbai (ITAT) ruled that income earned by Netcracker Technology Solutions LLC (Formerly known as Convergys Information Management Group Inc.) ('the Assessee') on account of data access/ link charges from its Indian subsidiary, Convergys Information Management (India) Pvt Ltd ('CIM') was neither for scientific work nor any patent, trademark, design, plan or secret formula, thus it could not be held to be 'Royalty' under Article 12 of the India-USA tax treaty (DTAA). On the issue of taxability of sale proceeds, arising from sale of shrink-wrapped software to Indian entities, it opined that same cannot be treated as consideration for transfer of copyright, hence not 'Royalty' income under Article 12 of the DTAA and same rule shall apply to taxability of service and maintenance fee associated with sale of shrink-wrapped software.

Brief facts and contentions

- The Assessee procured certain communication links (also known as 'IPLC') from third party service providers to carry out effective two-way communication among its geographically dispersed offices, the proportionate cost of which was allocated to various group companies based on the circuits used by them.

- The Assessee also received consideration from other Indian companies for supply of shrink-wrapped software, support & maintenance fees as well as service fee.

- In pursuance of the same, receipts from CIM, pertaining to allocated cost in respect of IPLC, were held as "royalty" by the Assessing Officer (AO) on the footing that underlying receipts were for the 'right to use a process' and hence, qualified as royalty. Moreover, it was noted that the receipts constituted FTS/FIS in terms of Explanation 2 to section 9(1)(vii) of the Act as well as Article 12(4) of the DTAA.

- The AO also taxed the receipts on sale of shrink-wrapped software as royalty and payments for support & maintenance services and service fee as FIS.

- Aggrieved by the decision of the Dispute Resolution Panel (DRP), the assessee preferred an appeal before the ITAT

ITAT's Judgement

- **Taxability of IPLC charges:**
  The payment made by the assessee to third parties was only in respect of standard services provided by third parties. Moreover, the service was a standard facility used by other telecom operators as well.

  For a payment to be construed as 'Royalty', it must encompass the essence of scientific work, patent, trademark, design etc. In the concerned case, since there was neither any performance of scientific work nor did it involve any patent, trademark, design, plan or secret formula, it could not be construed as royalty under Article 12 of the DTAA

- **Taxability of income from sale of shrink-wrapped software and support and maintenance services:**
  Consideration received by assessee was towards transfer of copyrighted article and not for 'use of' or 'right to use of' any copyright and same could not be construed as royalty.

  In addition, the said receipt could not be brought to tax under the Act since the assessee was eligible for beneficial provision of DTAA as per section 90(2) of the Act.

  Rendition of support and maintenance services bore nexus with the sale of shrink-wrapped software. Consequently, its taxability would hinge upon the taxation of proceeds from shrink-wrapped software. Hence, in the light of above inferences, the receipt from support and maintenance services would also not taxable under Article 12(4)(b) of the DTAA

- **Taxability of service fee:**
  It opined that the services were sub-contracted by the assessee to CIM on principle-to-principle basis. In the event of non-fulfilment of 'make available' test, the services could not be taxed. Further, mere fact that provision of service might require technical input by the service provider would not per se mean technical knowledge.

Nangia Andersen's Take

This ruling in an add-on to the glut of rulings on the issue of taxability of income as 'royalty' wherein ITAT has established the fact that mere reimbursement of link charges incurred by the assessee cannot be decoded as being 'royalty' in the absence of performance of scientific work, any patent, trademark, design, plan or secret formula or process. Moreover, it has to been cognized that whether the sale proceeds are from transfer of 'copyrighted article' or 'copyright' before deciding the taxability of the software charges as Royalty.

3. Bandwidth charges not taxable as Royalty under the India-Singapore tax treaty

Outcome - In favour of Assessee
Category - Taxability of bandwidth charges as Royalty

Background

The Mumbai Bench of the Income Tax Appellate Tribunal (ITAT) in the case of Reliance Jio Infocomm Ltd. ('the Assessee') held that the amount received by a Singapore entity for providing standard bandwidth services and operation & maintenance services could not be taxable as Royalty/ FTS under the India-Singapore DTAA.

Brief Facts and Contentions

- The Assessee entered into a 'bandwidth service agreement' (the agreement) with Reliance Jio Inforcomm Pte Ltd. Singapore (RJIPL) for providing standard bandwidth services.
- RJIPL also provided operations & maintenance services to the Assessee to upkeep the infrastructure such as maintenance of Cable Landing Station and equipment used by the Assessee to provide bandwidth services. These kind of services were required to ensure smooth and uninterrupted provision of the bandwidth services by RJIPL to the Assessee.
- The Assessee remitted payment to RJIPL after withholding tax in terms of Section 195 of the Act, but thereafter took a stand that it was not obligated to deduct tax at source.
- The matter was decided in favour of the Assesse before the CIT(A), which was appealed before the ITAT by the Revenue Authorities.

Brief Facts and Contentions

- The ITAT upheld the order of the CIT(A) noting that the Assessee had an access to the service and not to any equipment of RJIPL. It also did not have any access to any process, which helped provide such bandwidth services.
- Rejecting the Revenue's stand, the ITAT explained that when the expression 'royalty' is defined under the tax treaty, recourse to Article 3(2) cannot be taken to further dissect the issue and explore the domestic law meaning of each expression used in the definition for reaching a conclusion about connotations of royalty.

- The ITAT explained that a unilateral treaty override, however subtle, is not permissible.
- The payments/credit under the Agreement by the Assessee to RJIPL for operations & maintenance services cannot be regarded as FTS since such services do not 'make available' technical knowledge, experience, skill, know-how or processes, which enables the Assessee to apply the technology contained therein.
- As per the agreement, the obligation and liability for operations & maintenance is that of RJIPL. The Assessee is only interested in availing the bandwidth services and is not concerned or obliged in any manner with the infrastructure deployed by RJIPL. Thus, Operation & maintenance services cannot be regarded as FTS.
- The payments made by the appellant to RJIPL for rendition of operation & maintenance services will be in the nature of business profits and cannot be classified as FTS under the Act or the India-Singapore DTAA.
- In the absence of RJIPL's business connection or a PE in India, the business profits will not be taxable in India.

Nangia Andersen's Take

The ruling is yet another one in the gamut, wherein it has been established that unless there is a transfer of technology involved in technical services extended, the 'make available' clause is not satisfied and accordingly, the consideration for such services cannot be taxed as FTS. Further, it has been elucidated that Article 3(2) should not be invoked to dissect the definition and determine the meaning of the words used therein.

4. FTC available in respect of foreign taxes paid overseas even if the income is not subjected to tax in India

Outcome - In favour of Assessee
Category - Foreign Tax Credit for income exempt in India

Background

Tata consultancy services Ltd. (assessee), an Indian company was engaged in the business of export of computer software and other management consultancy activities. Regarding the deduction claimed by the assessee pertaining to state taxes paid overseas, the Assessing Officer (AO) granted the Foreign Tax Credit (FTC) only for income, which was subjected to tax in India. The Income Tax Appellate Tribunal, Mumbai (ITAT) ruled that FTC shall be granted to the assessee in respect of taxes paid overseas in all cases (i.e. in countries like US, Denmark, Norway, Oman, etc.) except for the foreign tax paid in Finland and Canada. It relied on the ruling of Hon'ble Karnataka High Court in the case of Wipro Ltd. It was lucid that where the respective tax treaty provides for benefit for foreign tax paid even in respect of income on which the assessee has not paid tax in India, still, it would be eligible for tax credit under section 90 of the Income Tax Act, 1961 (Act)

Brief Facts and Contentions

- The AO allowed the assessee to claim tax credit in respect of foreign taxes paid overseas on the income which was subject to tax in India as well as overseas. However, no tax credit was granted to the assessee in respect of income subjected to tax overseas but exempt in India.

- On appeal, the Commissioner of Income Tax (Appeals) [CIT(A)] bifurcated the FTC into three parts, viz., taxes paid in USA, taxes paid in other DTAA countries and taxes paid in non-DTAA countries and held that tax credit shall be allowed in respect of taxes paid in USA even on exempt income. However, with respect to taxes paid in other DTAA countries and non-DTAA countries, no tax credit was allowed for income which was exempt from tax by purview of section 10/10AA of the Act.

- Aggrieved by the decision of CIT(A), assessee preferred an appeal before the ITAT.

ITAT's Judgement

The ITAT ruled that taxes paid by the Assessee overseas, were eligible for credit in all cases except for the foreign taxes paid in Canada and Finland. Key observations of the ITAT were as follows:

- It referred to the decision of Hon'ble Karnataka High Court in the case of Wipro Ltd. wherein it was held that though income is chargeable under the Act, it is open to parliament to grant exemption under the Act in order to incentivize the assessees to carry out certain manufacturing activities.

- Moreover, in the Indo-US DTAA, it was apparent that there was no legal requirement to mandatorily pay tax in India before claiming FTC.

- Where the benefit of FTC is granted in the respective DTAA even in respect of the income on which no tax has been paid in India, still it would be eligible for FTC under section 90 of the Act.

- In addition to Indo-US DTAA, DTAAs with other jurisdictions such as Indo-Denmark, Indo-Hungary, Indo-Norway etc. also provide FTC benefit even in respect of income on which no tax has been paid in India. On the contrary, Indo-Canada and Indo-Finland DTAAs do not allow FTC unless tax has been paid in both the jurisdictions.

- Therefore, the ITAT opined that FTC would be available to assessee in all cases except the foreign tax paid in Canada and Finland

Nangia Andersen's Take

The ruling is an addition to the on-the-go FTC availability controversy wherein distinction has been carved out very precisely by the ITAT in respect of the provisions encompassed in several DTAAs with respect to availability of FTC in circumstances where tax has not been paid in India consequent to exemptions granted by the purview of the Act. Assessee has been fairly accorded the benefit of FTC in accordance with the legitimate provisions prescribed in the Act as well as DTAA.

TRANSFER PRICING

1. ITAT deletes adjustment on outstanding receivables sans existence of international transaction entered into between two domestic AEs; reiterates that SDT provisions inapplicable prior to 2012

Outcome - In favour of taxpayer
Category - Associated Enterprise; Deemed International Transaction; Specified Domestic Transaction

Facts of the Case

- Reach Data Services India Private Limited ("the taxpayer"), is engaged in the business of providing network and support services to its Associated Enterprise ("AE") i.e. M/s Reach Network India Pvt. Ltd. During the assessment year ("AY") 2012-13, the taxpayer had outstanding receivables amounting to INR 20.68 crores from its AE.

- During assessment proceedings, the Assessing Officer ("AO") observed the following:

    - The taxpayer as well as its AE have major shareholding of a foreign entity and also have a common director, accordingly, the transaction in question was dominated by their parent holding company;

    - Further, on the basis of the service agreement entered into between the taxpayer and its AE for providing network services, the transaction shall be considered as a 'deemed international transaction' as per section 92B(2) of the Income Tax Act ("the Act")

- In view of the above, the AO observed that the taxpayer could have earned interest on the amount receivable from its AE, consequently, preferred a Transfer Pricing ("TP") adjustment. In response to the query raised by the AO, the taxpayer submitted that the transaction between two domestic related parties do not qualify as 'international transaction' as per the provisions of Section 92B of the Act, accordingly, no upward adjustment is required in the case of the taxpayer.

- The AO proceeded with its observations and by applying an interest rate of 9% per annum (interest rate prevailing on bank deposits in India) on the amount of receivables due from the AE, carried out an upward adjustment.

- Aggrieved by the same, the taxpayer appealed before the Commissioner of Income Tax ("CIT(A)"). The CIT(A) upheld the order of the AO. Aggrieved by the order of the CIT(A), the taxpayer was in appeal before the Mumbai Income Tax Appellant Tribunal ("ITAT"/ "the Tribunal").

ITAT's Ruling

ITAT made the following observations:

- **With respect to establishing that the parties involved are AEs :** The ITAT concurred with the findings of the lower tax authorities and accepted that the taxpayer and its AE are related parties under Section 92A(2) of the Act;

- **With respect to establishing that the transaction involved qualifies as 'international transaction' :** In this regard, the ITAT analyzed in detail the provisions of Section 92B of the Act and noted the following:
  - Sub-section (1) of Section 92B states that an 'international transaction' is a specified transaction entered into between two or more AEs, either or both of whom are non-residents. In view of the same, the ITAT noted that since both the related parties involved in the said transaction were non-resident, accordingly, the said clause is not applicable in the instant case;

  - Sub-section (2) of Section 92B presupposes 'a transaction entered into by an enterprise with a person other than its AE', consequently, in the instant case, it is clear that the transaction under consideration has been undertaken between two AEs, accordingly, the said condition is not satisfied.

- In backdrop of the above, the ITAT opined that on the mere basis that a transaction has been undertaken between two AEs shall not qualify for being an 'international transaction', accordingly, held that the transaction in the instant case is not an 'international transaction'.

- In addition, the ITAT opined that the said transaction shall fall outside the gambit of Specified Domestic Transaction ("SDT") as the provisions relating to the same were applicable vide Finance Act, 2012 w.e.f. 01.04.2013, i.e. from AY 2013-14 and the assessment year under consideration is AY 2012-13.

  Further, the ITAT relying on the ruling of the coordinate bench in the case of **M/s Astrix Laboratories Ltd. Vs. ACIT, set aside the order of the CIT (A) and deleted the proposed TP adjustment.**

Nangia Andersen's Take

The instant case clearly analysed the specific provision of Section 92B(2) which presupposes the condition pertaining to a transaction entered into by an enterprise with a person other than its AE. In view of the same, ITAT concluded that a transaction between two domestic AEs would not qualify as Deemed 'international transaction' under section 92B(2) despite of the fact that the transaction is dominated by their parent holding company. Accordingly, sans existence of an international transaction, no adjustment can be made on a domestic transaction.

Moreover, the instant case also clarifies that the introduction of Specified Domestic Transactions ("SDTs") vide Finance Act 2012 came w.e.f 01.04.2013 and is consequently, inapplicable for the years preceding on the same.

Source: Reach Data Services India Private Limited [TS-1012-ITAT-2019(Mum)-TP]

2.ITAT adopts cup method, accept comparable data from the custom department's database for benchmarking imports/exports

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 for overseas group companies wherein it earns indenting commission.

- During the year under consideration, taxpayer has undertaken international transactions of import of raw materials and export of finished goods with its Associated Enterprises ("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 similar transactions pertaining to 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 on the ground that the taxpayer is a loss making concern & instead adopted Transaction Net Margin Method ("TNMM").
  - TPO used profit level indicator of Operating profit/ Operating Revenue under TNMM and rejected comparables adopted by the taxpayer and thereby selected new set of comparables to benchmark the transaction of import of raw materials and made adjustment of INR 37 cr. approx. The TPO did not disturb the ALP determination of any other international 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 directed the Assessing officer to rectify the computation of margin of comparables and 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" / "tribunal").

ITAT's Ruling

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 not on account of import transactions from its AEs, but on account of commercial reasons by having lower sales price realization from a third party customer and hence, dismissed the rejection of CPM as MAM by the TPO in the instant case.

- **Adoption of Most Appropriate Method**

  ITAT observed that the assessee had given up the claim of CPM before the ld. DRP and had prayed for adoption of CUP in view of the fact that CUP is a direct method and 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, for the purpose of comparability of the prices of import transactions carried out by the assessee vis-à-vis comparable 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 under CUP method, the entire additional evidence filed by the assessee seems fit and appropriate to restore the entire issue to the file of the Ld. Assessing Officer with following directions

  - CUP (a direct method and traditional transaction 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, (reliance placed on Delhi ITAT ruling in case Tilda Riceland Pvt. Ltd) .

  - While comparing the data with the comparable prices using TIPS Data Base, portfolio approach shall be adopted to take both the prices that are favourable to assessee as well as that are adverse to assessee in view of a categorical finding of fluctuating prices for the same product. Further, 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 and ignore those transactions that are detrimental to them” Further, ITAT accepted the adoption of CUP being the most direct and traditional transaction 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.

Source: Rohm and Haas India Pvt Ltd [TS-926-ITAT-2019(Mum)-TP]

REGULATORY

1. Amendment to the related party transaction rules

The Ministry of Corporate Affairs ("MCA") via notification dated November 18, 2019 has amended the Companies (Meetings of Board and its Powers) Rules, 2014.

A company entering into a related party transaction beyond certain limits is required to take approval of the shareholders by ordinary resolution. MCA through this notification has amended the limits for passing such ordinary resolution.

The revised limits which will require ordinary resolution are as follows:

- Sale, purchase or supply of any goods or material, directly or through appointment of agent amounting to 10% or more of the turnover of the company.
- Selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent 10 % of net worth of the company.
- Leasing of property any kind amounting to 10 % or more of the turnover of the company
- Availing or rendering of any services, directly or through appointment of agent amounting to 10% or more of the turnover of the company.

2. Form NFRA-2, annual return to be filed by auditor with the national financial reporting authority - Extension in filing date

The Ministry of Corporate Affairs ('MCA') has vide general circular number 14/2019 dated November 27, 2019 extended the deadline to file NFRA-2 (Annual Return To Be Filed By Auditor With The National Financial Reporting Authority) to 90 days from the date of deployment of this form on the website of the MCA. Form NFRA-2 is yet to be deployed by MCA

3. Form PAS-6, reconciliation of share capital audit report - Extension in filing date

The Ministry of Corporate Affairs ('MCA') has vide general circular number 16/2019 dated November 28, 2019 extended the deadline to file PAS-6 (Reconciliation of Share Capital Audit Report) for the half –year ended on 30.09.2019 to 60 days from the date of deployment of this form* on the website of the MCA. FORM PAS-6 is yet to be deployed by MCA.

4. Company law committee recommendation report - submitted to the government

The Ministry of Corporate Affairs (MCA) had constituted the present Company Law Committee ("CLC") under the chairmanship of Sh. Injeti Srinivas, Secretary, MCA vide an office order dated September 18, 2019.

The CLC has now submitted its report with recommendation to the Central Government through MCA on further re-categorization of certain criminal compoundable offences to "civil wrong" carrying civil liabilities and certain other changes to facilitate and promote ease of doing business and ease of living.

In respect of offences involving serious frauds including public interest, status quo has been retained.

Through this report this committee has recommended to rationalize the penalties in respect of 46 more compoundable offences in five different manners.

This report is in pursuance and continuation of the policy of the Government of India to decriminalize non-compliance of minor, technical or procedural nature and facilitate and promote ease of doing business and ease of living for law abiding corporates in the country.

The main recommendations of the Committee as included in Chapter I of the Report are as follows :

- Re - categorizing of 23 offences out of the 66 which are in the category of compoundable offences to an in-house adjudication framework wherein defaults would be subject to a penalty levied by an adjudicating officer;
- Omitting 7 compoundable offences, limiting 11 compoundable offences to fine only (i.e. removing the imprisonment part) and recommending 5 offences to be dealt with in an alternate framework (including through exercise of contempt powers by National Company Law Tribunal)
- No change has been suggested in respect of any of the non-compoundable offences.

In addition to the above chapter 2 contains recommendation related to further ease of living.

That the recommendations of the committee will result in further reducing the overall burden of Special Courts and National Company Law Tribunal while giving a fillip to honest and law abiding corporates and other stakeholders in the country.

5. Amendment in SNRR account - Foreign Exchange Management (Deposit) Regulations, 2016

The Reserve Bank of India (RBI) via notification dated November 13, 2019 has amended the Foreign Exchange Management (Deposit) Regulations, 2016 ("Deposit Regulation").

The RBI through said notification has made amended the Schedule 4 of the Deposit regulations which has widened the ambit of the transactions that could occur through Special Non-Resident Rupee Account.

The key highlights of the amendments are as follows:

- Any person resident outside India, having business interest in India, may open SNRR account with authorized dealer. The business interest, apart from generic interest, shall include the following INR transaction, namely :-
  - Investment made in India in accordance with Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and Foreign Exchange Management (Debt) Instruments Regulations, 2019.
  - Import of goods and services in accordance with Section 5 of the Foreign Exchange Management Act, 199 and Foreign Exchange (Current Account Transaction) Rules, 2000
  - Export of goods and services in accordance with Section 7 of the Foreign Exchange Management Act, 199 and Foreign Exchange (Current Account Transaction) Rules, 2000
  - Trade credit transaction and lending under External Commercial Borrowing (ECB) framework in accordance with Foreign Exchange Management (Borrowing and Lending) Regulation, 2018
  - Business related transaction outside International Financial Service Centre(IFSC) by IFSC units at GIFT city like administrative expenses in INR outside IFSC, INR amount from sale of scrap, government incentive in INR, etc. The account will be maintained with bank in India (outside IFSC).
- RBI through the amendment has allowed India bank at its discretion, maintain separate SNRR account for each category of transaction or a single SNRR account for a person resident outside India engaged in multiple categories of transaction provided it is able to identify/ segregate and account them category – wise.

- The tenure of the SNRR account shall be concurrent to the tenure of the contract/period of operation/business of the account holder and in no case shall exceed 7 years. Approval of Reserve Bank shall be obtained in cases requiring renewal.

  Prior to the amendment, the restriction of 7 years was not applicable to SNRR accounts opened by a person resident outside India for the purpose of making Investment in India in accordance with Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2017. However, post amendment, the scope of 7 years not being applicable has been widened to include Transaction as set out above under cases 1(a) to 1(e).

GST

1. Restriction in availment of input tax credit (ITC) in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers

The gist of the important clarification is given as under:

- Recipient can avail ITC in a tax period which should not exceed 20% of the eligible ITC available in respect of the invoices/ debit notes that have been uploaded by the suppliers in its GSTR-1 up to the due date of filing GSTR-1 (i.e. 11th of succeeding month);
- 20% restriction is applicable only on invoices / debit notes on which ITC is availed after 9 October 2019;
- Recipient's would be required to ascertain the eligible amount of ITC in respect of invoices/ debit notes which are reflected in GSTR 2A, auto populated as on the due date of filing of form GSTR-1; and
- Recipient would be eligible to avail ITC in any subsequent tax period (up to September of the subsequent Financial Year) for which ITC has not been availed on account of the said restriction.

2. Simplification of GSTR-9 (Annual Return) and GSTR-9C (Audit Report) for Financial Year ('FY') 2017-18 and FY 2018-19:

Central Board of Indirect Taxes and Customs (CBIC) has issued Notification No. 56/2019 – Central Tax dated 14 November 2019 related to simplification of the Annual Return / Audit Report. Some key changes are highlighted below:

- Optional bifurcation of ITC into inputs, input services & capital goods in the Annual Return;
- Optional reporting for HSN Summary of inward supplies and outward supplies in the Annual Return;
- An option has been provided to taxpayers to upload cash flow statement (if available); and
- The language of GST Audit Report Certificate has been amended to "True and Fair" view from "True and correct".

COMPLIANCE CALENDAR

Due Date	Particulars
7th December 2019	Payment of TDS - For the period 1st November 2019 to 30th November 2019
	Payment of Equalisation Levy - For the period 1st November 2019 to 30th November 2019
15th December 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 October 2019- tax deduction in October 2019
	Issuance of TDS certificate in Form 16C for tax deposited u/s 194-IB (TDS on rent of immovable property) in the month of October 2019- tax deduction in October 2019
	Due date for payment of third instalment of Advance Tax for AY 2020-21
30th December 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 November 2019
	Payment and furnishing of challan-cum-statement (Form 26QC) in respect of tax deducted under section 194-IB in the month of November 2019
	Furnishing of report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is January 1, 2018 to December 31, 2018) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report u/s 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.

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 FY 2017-18	Registered person	Annual	31st December'2019
GSTR-9C	Audit report and reconciliation statement FY 2017-18	Registered person	Annual	31st December'2019
GSTR- 9	Annual return FY 2018-19	Registered person	Annual	31st March' 2020
GSTR- 9C	Audit report & reconciliation statement for FY 2018-19	Registered person	Annual	31st March' 2020

S.No.	Compliance	Due Date
1.	E-Form MGT-7 (Annual Return)	30/12/2019*
2.	E- Form BEN – 2 Return to the Registrar in respect of declaration regarding significant beneficial owners	31/12/2019*
3.	ECB-2, Monthly reporting of ECB for the month of October	07/12/2019
4.	Annual Performance Report(APR) for Overseas Direct Investment	31/12/2019

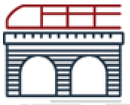
ABOUT US

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



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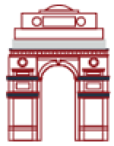

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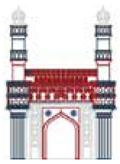

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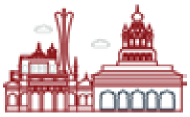

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