Nangia Andersen LLP

NEWSLETTER

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What's Inside?

Direct Tax

1. Subscription Charges paid to US based entity- Not taxable in India

Outcome : In favor of the assessee
Category : Fee for Technical Services (FTS)

Background

The Income Tax Appellate Tribunal (ITAT) ruled that subscription fees paid by Triton Communications Pvt. Ltd (assessee) to the US-based foreign company for receiving the services of integrated communication resources was not taxable as Fee for Technical Services (FTS) in India. The services of the foreign company were available only to its members, spread across 60 countries and assessee has utilized the same services from international independent agency networks through which any of the members can utilize the same anywhere in the world.

Brief facts and contentions

- ICOM, a US-based entity, offered integrated marketing and media communications services through rendition of free exchange of ideas, information and support across members strewed internationally in more than 60 countries.
- Assessee, an Indian member entity of ICOM, paid subscription fee to ICOM to subscribe for the said services.
- The assessing officer (AO) observed that service utilized by the assesse had inflated the assessee's capabilities in making better decisions. Hence, such services, as availed by the assessee, were in the nature of technical services, which were availed by the Indian company and non-resident entity had made them available in India. Accordingly, the AO held the same as taxable in India and stated that the assessee ought to have withheld taxes.
- Aggrieved by the decision of Commissioner of Income Tax (Appeals) [CIT(A)], passed in favor of revenue, assessee preferred an appeal before the ITAT

ITAT's Judgement

The ITAT ruled that subscription charges paid by assessee to US- based entity would not be taxable as FTS in India. Key observations are as follows-

- ICOM offered services only to its members (spread in more than 60 countries) who acquired membership in ICOM.
- It was observed that assessee had utilized the same services from international independent agency networks through which any of the members can utilize anywhere in the world.
- Therefore, since the origin and source of such services was outside India, mere utilization of such services in India would not render the services as taxable in India and same cannot be brought to tax in India as FTS.
- Further, any income/ payment, not taxable in India are outside the provision of TDS as well.

Nangia Andersen LLP's Take

This ruling provides an insight that payment made to a non-resident service provider would not fall in the gamut of taxation if the services are merely net-based services, not technical in nature. The ITAT in this case, observed that the services were not specifically rendered to assessee, but across a huge clientele in over 60 jurisdictions and due to the absence of element of technical nature in the services so rendered, the tax benefit was turned in favor of assessee. Further, it was also noted the assessee had utilized the services outside India and thus the same could not be charged to tax as FTS.

Past precedents on this issue

On Similar lines, in a recent decision[1], the Mumbai HC ruled in favor of the assessee wherein services were purely of a commercial nature and bore character of income arising to the service provider wholly outside India. Moreover, such services were neither rendered in India nor utilized in India and therefore, payments for services so rendered did not partake character of fees for technical services.

Source: Triton Communications Pvt. Ltd. v. ACIT I.T.A. No. 272/Mum/2019

[1]Commissioner of Income-tax (IT) v. Indusind Bank Ltd. [(2019) 106 taxmann.com 343 (Bombay)]

2. Consultancy services rendered by Indonesian law firm taxable as FTS in India- Section 9(1)(vii)(b) exclusionary provision not applicable

Outcome : In favor of revenue
Category : Fee for technical services

Background

M/s Shriram Capital Limited (assessee) availed services of an Indonesian law firm for the purpose of acquisition of an insurance company in Indonesia and the same was held to be taxable in India by the Assessing Officer (AO) as Fee for Technical Services (FTS) under section 9(1)(vii) of the Income Tax Act, 1961 (Act). The High Court, Madras (HC) denied the exception under section 9(1)(vii)(b) and ruled in favor of the revenue, opining that there was a mere proposal for acquiring the insurance business and no pre-existing business in Indonesia. Hence, the services of Indonesian law firm were held to be taxable in India as FTS.

Brief facts and contentions

- The assessee had engaged the services of a law firm in Indonesia for acquiring an Insurance business in Indonesia and had filed an application under Section 195 of the Act for exemption from deduction of tax at source on payment made to the foreign law firm, which was rejected by the Income Tax Authorities (ITA).
- The assessee asserted that to deduct tax at source, income should either be received in India by the recipient or deemed to have accrued or arisen in India.
- Further, in view of exception carved in section 9(1)(vii)(b) of the Act, since the services were procured for a future business to be carried on by assessee in Indonesia and the consideration paid was for the purpose of making or earning income from any source outside India, the income would not be deemed to accrue or arise in India and the assessee would not have any tax withholding obligation
- The ITA opined that the services rendered had no nexus with the generation of income abroad by the assessee since the assessee did not have any business activities in Indonesia and the consideration was for the purpose of mere acquisition of a business in Indonesia. Hence, the place of utilization was established in India and consideration for services was held as taxable in India
- The assessee filed a Writ petition before the HC

HC's Judgement

The HC ruled that services rendered by the Indonesian law firm for proposed acquisition of Indonesian insurance company were liable to tax in India as FTS. Key observations are as follows-

- From the nature of work performed, it was apparent that the Indonesian law firm had rendered consultancy services, thereby falling within the ambit of FTS
- The HC held that the assessee was wrong in claiming that the services availed were utilized for business or profession outside India or for the purpose of making or earning income from any source outside India (i.e. exception under Section 9(1)(vii)(b) of the Act), as in this case, there was a mere proposal for acquiring the insurance business in Indonesia and there was no pre-existing business of the assessee in Indonesia

- The services were held to be utilized in India and thus taxable in India irrespective of the place of rendition of the services. Accordingly, the payments made to the non-resident law firm were subject to deduction of tax at source.
- It was stated that if the services utilized by the petitioner abroad were for pre-existing business in Indonesia, the petitioner could have lawfully taken the benefit of exception carved in section 9(1)(vii)(b) of the Act

Nangia Andersen LLP's Take

This ruling provides an insight that taxation of an income would hinge upon the source rule of taxation whereby income shall be deemed to accrue or arise in India if the services have been utilized in India. HC has also portrayed the fact that exception stated in section 9(1)(vii)(b) of the Act is applicable only if the payer has a pre-existing business in another jurisdiction and same shall be non-functional if no income earning source exists outside India.

Past precedents on this issue

Contradictory decision had been delivered by Delhi HC[1] wherein the assessee (an Indian company, engaged in the business of wet-leasing aircrafts to non-resident companies), who availed services of a German enterprise for overhaul and maintenance of wet-leased aircrafts was entitled to benefit of exception carved under section 9(1)(vii)(b). It was held that the predominant nature of the assessee's activity was to wet-lease the aircraft to a foreign company. The operations were abroad, and the expenses towards said overhaul payments were for the purpose of earning abroad. Hence, the source of income was located outside India.

The contradiction between decisions delivered in the two cases could be outlined on the fact that in the case under consideration, the assessee was primarily operating in India and had no pre-existing income source outside India i.e. in Indonesia meaning thereby that the jurisdiction of utilization of services was situated in India, which brought the income to tax in India. Whereas, in the decision delivered by the Delhi HC, the assessee was predominantly engaged in leasing business to non-residents meaning thereby that the source of income was located abroad and the overhaul payments were in conjunction to earning income abroad.

Source: Shriram Capital Ltd. v. DIT 115 taxmann.com 388 [2020] (Madras)

[1]Commissioner of Income-tax (IT) v. Indusind Bank Ltd. [(2019) 106 taxmann.com 343 (Bombay)]

3. Distribution revenue accruing to US based company from Indian distributor- Not taxable in India in the absence of PE

Issue: Dependent agent PE
Outcome: In favor of assessee

Background

Bombay High Court (HC) concurred with the findings of Income Tax Appellate Tribunal (ITAT) and ruled that distribution revenue accruing to Taj TV Ltd. (assessee), a Mauritian company engaged in telecasting sports channel called 'Ten Sports', was not taxable in the absence of Permanent Establishment (PE) in India in view of Article 5(4) of the Indo Mauritius Tax Treaty (DTAA). It was noted that Taj India was not acting as agent of the assessee but it had obtained the right of distribution of the channel for itself and the entire agreement was on principal to principal basis.

Brief facts and contentions

- Assessee had appointed Taj India as its distributor to distribute the Channel 'Ten Sports' to cable operators for exhibition to subscribers in India and received distribution revenue from Taj India in conjunction to such distribution agreement
- The Assessing Officer (AO) observed that the distribution revenue was collected through Taj India on behalf of the assessee and Taj India had the exclusive right to represent the assessee before the cable operators and to negotiate cable license agreement for the service as authorized by the assessee
- Moreover, the distribution revenue collected by Taj India was shared in the ratio of 60:40 by the assessee and Taj India. Therefore, AO held that the assessee had a PE in India and the distribution revenue was taxable as business income
- Aggrieved by the decision of Commissioner of Income Tax Appeals [CIT(A)] and ITAT, which were in the favor of assessee, the revenue preferred an appeal before the HC

HC's Judgement

HC concurred with the findings of ITAT to rule that distribution revenue accruing to assessee would not be taxable in India in the absence of assessee's PE in India. Key observations are as under-

- HC highlighted the findings of ITAT wherein it was observed that Taj India had obtained the right of distribution of the channel for itself and hence, was not acting as agent of the assessee but independently in respect of its distribution rights
- The distribution of the revenue was shared between the assessee and Taj India and the entire relationship was established on principal-to-principal basis. Moreover, Taj India had, subsequently, also entered into contracts with other parties in its own name in which the assessee was not a party
- Therefore, it was held that the distribution income earned by the assessee could not be taxed in India because Taj India did not constitute an agency PE under the terms of Article 5(4) of the DTAA

Nangia Andersen LLP's Take

This ruling is a lucid demonstration of the fact that where an entity is acting independently in respect of its distribution rights, it cannot be construed as constituting agency PE in India even if the revenue associated with distribution agreement is shared between the parties. Here the independence has been proven by outlining that Taj India was acting independently in respect of its distribution rights and entire relationship was on principal-to-principal basis where Taj India entered into contracts with other parties as well.

Past precedents on this issue

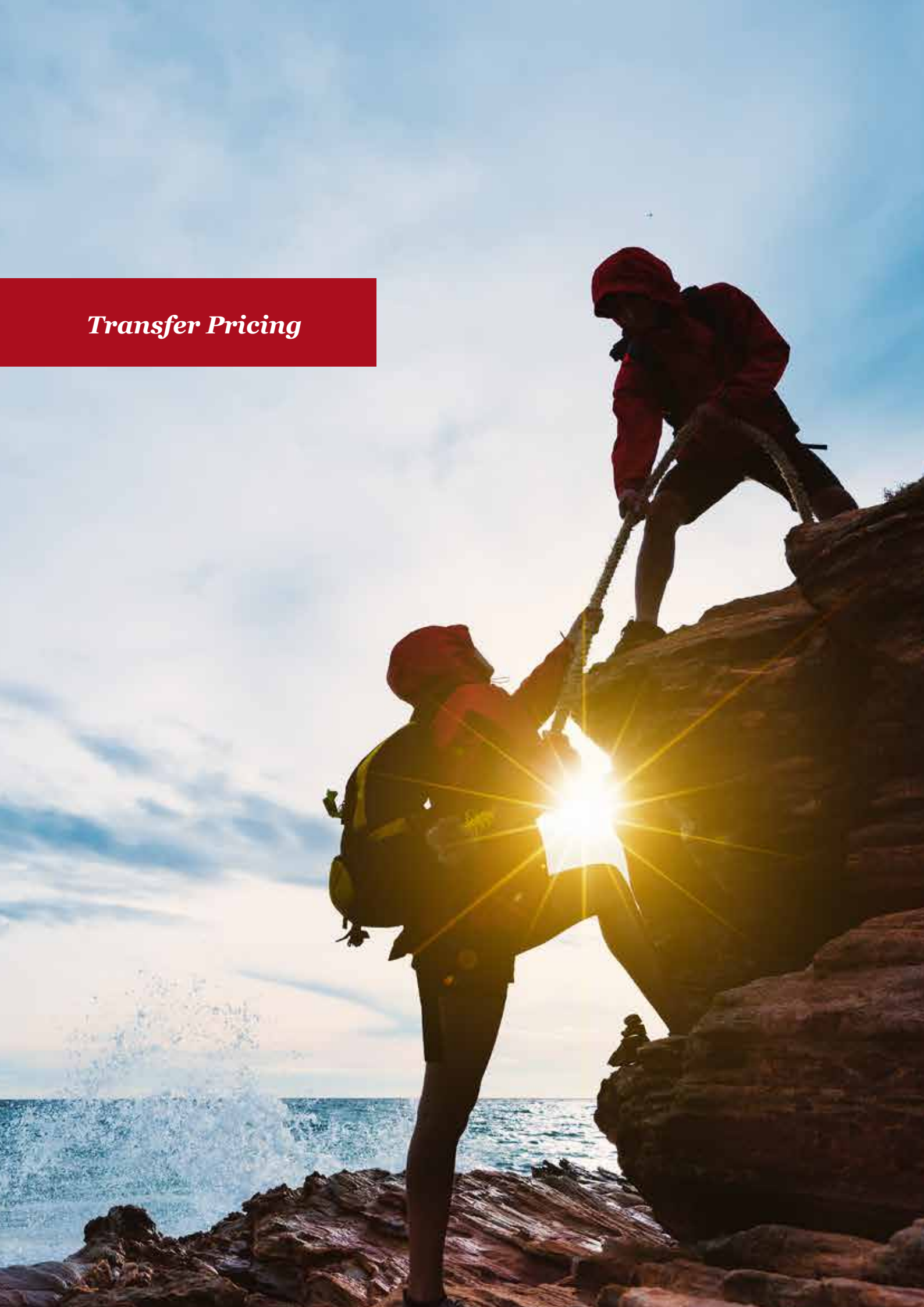
On the contrary, in a ruling delivered by Mumbai Tribunal in the case of NGC India[1], it was held that NGC India constituted a 'dependent agent PE' of a US based company since NGC exercised, an authority to conclude contracts on behalf of assessee. It was observed that 'advertisement airtime' sold by NGC India was incapable of being used independently by the purchasers until the assessee telecasted the same in its television channel. NGC India was only canvassing the advertisements for the assessee through the sale of advertisement airtime and the same made NGC India an 'agent' of the assessee, since the advertisement airtime, per se, did not have any value without the assessee agreeing to telecast the advertisement material.

Hence, the distinction between the present case and the case of NGC Network is that Taj India was functioning independently in respect of its distribution rights and there was no interference from the assessee. Moreover, it entered into other contracts as well where assessee was not a party whereas in the case of NGC Network, the strand of independence was missing as the activities performed by NGC India served no purpose until the advertisements were telecasted by assessee in its channels.

CIT v. Taj TV Ltd. 115 taxmann.com 305 [2020] (Bombay)

[1]NGC Network Asia LLC v. Joint Director of Income-tax (International Taxation) [64 taxmann.com 289 (Mumbai - Trib.) (2015)]

Transfer Pricing



1. ITAT rejects Nil-ALP determination of intra-group services and thereby deletes TP adjustment

Outcome : : In favour of taxpayer
Category : Intra-group services

Facts of the case

- Millward Brown Market Research Services India Private Limited ("the taxpayer"), a subsidiary of Russell Square Holding BV, Netherlands is engaged in the business of providing research based consultancy services including advertising, marketing communications, media and brand equity research.
- During the course of the transfer pricing assessment proceedings for FY 2011-12, the taxpayer entered into various international transactions with its Associated Enterprises ("AEs") including the transaction pertaining to "Payment towards allocation of operational expenses". In this regard, the Transfer Pricing Officer ("TPO") asked the taxpayer to submit documentary evidence that showed that the intra-group services had actually been rendered to the Assessee and a benefit had been derived therefrom.
- Based on the documents submitted by the taxpayer, the TPO concluded that the taxpayer has failed to draw a nexus between the costs incurred by the AEs and the benefits received by the taxpayer and also rejected the benchmarking undertaken by the taxpayer. Consequently, TPO determined an arm's length price ("ALP") of the international transaction in this case is NIL and made a TP adjustment for the aforesaid transaction relating to the costs recharged as operational expenses amounting to INR 3,91,71,499.
- The taxpayer aggrieved by the order of the TPO filed an objection before the Dispute Resolution Panel ("DRP"). The DRP confirmed TPO's decision and aggrieved by the same, the taxpayer is in appeal before the Hon'ble Income Tax Appellate Tribunal ("ITAT").

ITAT's Judgement

ITAT made following observations:

- TPO determined the ALP of the international transaction in this case to be NIL, without applying any method of benchmarking international transaction as specified in section 92C of the Income Tax Act, 1961 and without following the method as prescribed under Rule 10B of Income Tax Rules, 1962;
- Taxpayer submitted voluminous document showing the receipt of services however the same has been summarily dismissed by the TPO on the ground that the benefit accruing to the assessee has not been established;
- The TPO's duty was to benchmark the international transaction and thereby computation of ALP. Instead of performing his statutory duties, The TPO by entertaining doubts with regard to the business expediency of the payment, stepped into the shoes of the Assessing Officer for making disallowance under section 37(1) of the Act

In view of the aforementioned observations and by placing reliance on the ***Hon'ble High Court ruling in case of CIT vs. Johnson & Johnson Ltd., ITA no. 1030/2014,*** ITAT held that the TP adjustment at NIL fails at both counts i.e. firstly on account of benefit test which is not to be applied by TPO and secondly on account of reason that none of the method of benchmarking as specified in section 92C has been applied by the TPO.

Nangia Andersen LLP's Take

The instant ruling clearly states that the TPO are bound to perform their own duties i.e. determination of ALP of international transaction by applying one of the method as prescribed in Indian TP Regulations and cannot step into the shoes of the duties of assessing officer by applying benefit test.

The instant ruling is addition to the plethora of ruling which clearly establishes the fact that the 'Intra Group services' are always intensely investigated by lower level of Indian Tax Authorities wherein they conceive receipt of such services as merely a profit extraction tool by stating that such services lack commercial expediency. Therefore, taxpayers are required to maintain detailed, robust and contemporaneous documents/information to establish need test, evidence or rendition tests and benefit tests.

Source: [TS-266-ITAT-2020(Mum)-TP]

2. ITAT held that TPO erred in determining the ALP of SDT transaction as NIL, since TPO has no authority to judge the commercial expediency

Outcome: : In favour of taxpayer
Concept: Authority of TPO

Facts of the Case

- Nymphea Developers Private Limited ("the taxpayer") is engaged in business of real estate activities in development of project under collaboration. The taxpayer is a consortium of three different companies of the Orris Group including Orris Infrastructure Private Limited ("OIPL"/"Associated Enterprise").
- The taxpayer had applied to Yamuna Expressway Industrial Development Authority ("YEIDA") for allotment of land for development and was granted a plot for the purpose of making an integrated township.
- Since, the Associated Enterprise ("AE") was also engaged in real estate business of developing and selling of residential, commercial units' sector. Thus, the taxpayer and the AE entered into a Collaboration Agreement wherein the taxpayer relinquished its rights to its AE to develop the real estate project at its own cost in consideration of agreed share in the built-up area of the project land as per the agreement
- entered between them. Accordingly, the rights and interest of the project land were transferred from the taxpayer to its AE.
- Further, a sub-lease deed was executed between YEIDA, ATS Realty Private Limited ("third party that is engaged in the real estate operations") and the taxpayer. In lieu of the development rights of project land transferred to the AE by the taxpayer, a consideration amounting to INR 688,048,216 was paid as collaboration expenses to OIPL directly by the third party on behalf of the taxpayer for relinquishing the rights over the land. The land was subsequently sold by the taxpayer to its AE.
- During the year under consideration, the taxpayer had undertaken a specified domestic transaction ("SDT") with its AE being an Indian entity viz. OIPL.
- During the course of scrutiny proceedings, the Assessing Officer ("AO") noticed that the taxpayer has entered into SDT with its AE and therefore, the AO he referred the benchmarking of the said transaction to the Transfer Pricing Office ("TPO") for determining the arm's length price ("ALP") under section 92CA of the Income Tax Act, 1961 ("the Act").
- TPO found that the value of SDT transaction in the nature of collaboration expenses undertaken by the taxpayer was recorded at different values at a different places (i.e. value as reported in Form 3CEB vis-à-vis Financials) & hence, rejected the benchmarking carried out by the taxpayer by contending it to be a colourable device.
- The TPO determined the ALP of the SDT transaction i.e collaboration expenses at NIL in the absence of reliable data and moreover, taking into account the fact that no independent third party would have adopted such an arrangement.
- Aggrieved by the order of AO taking the effect of aforesaid TP adjustment, the taxpayer filed appeal before the Commissioner of Income-tax (Appeals) {"CIT(A)"} which was rejected by CIT(A).
- Aggrieved by the same, the taxpayer filed an appeal before the Income Tax Appellant Tribunal ("ITAT"/"the Tribunal").

ITAT's Ruling

The ITAT made the following observations:

- ITAT noted that the taxpayer benchmarked the SDT transaction following Any Other Method as Most Appropriate Method but TPO, instead of benchmarking the transaction in accordance with the law, simply took the value of the said transaction at Nil by stating that reliable data was unavailable. Thus, the Tribunal opined the action of TPO as unjustified in rejecting the benchmarking of the taxpayer.

- Accordingly, ITAT clarified that two options were available with TPO in case data is not available. First option is that the TPO should have gathered data available in public domain and "If data is not available in public domain, the TPO should collect from private domain by way of issue notice under section 133(6) of the Act and confront the same to the taxpayer and then decide the ALP of the SDT". Second option is that if no data is available, then accept the benchmarking carried out by the taxpayer.

- ITAT held that the TPO has no authority to hold that the said transaction should not have taken place. Relying upon the jurisdictional High Court ruling in the case of ***Cushman and Wakefield (India) Pvt. Ltd. . [TS-150-HC-2014(DEL)-TP]*** where it was held that the TPO's authority is to determine the ALP for international transactions or SDT referred to him by the AO, rather than determining whether such services exist or benefits have accrued.

- ITAT remanded the matter back to AO/TPO for deciding afresh as TPO has not carried out exercise of determining ALP of the SDT in accordance with law.

Nangia Andersen LLP's Take

The verdict in the instant case reiterates the fact that the authority of TPO is only limited to determine ALP of an international transaction/SDT and not to decide if any benefits arise to the taxpayer or whether the services actually rendered or not.

Further, the TPO are required to determine the ALP of the transaction referred to him on the basis of data available with him and in accordance with the law. The Tribunal by relying on the HC ruling in the case of Cushman and Wakefield has also clarified that authority of TPO is not to decide if such services existed or benefits accrued to the taxpayer which were under the exclusive domain of the AO.

Such rulings are welcomed for enhancing the confidence of the taxpayer since these excessive powers and authorities exercised by the lower level of tax authorities lead to prolonged and incessant litigations for the taxpayers.

Source: Source: Nymphea Developers Pvt Ltd [TS-267-ITAT-2020(DEL)-TP]

Regulatory

1. Under Companies Act 2013

- ### Convening of Extraordinary General Meetings (EGMS) through Video Conferencing (VC) or Other Audio Visual Means (OAVM) complemented with E-voting facility/simplified voting through registered emails

  Owing to the difficulties faced by Companies in holding physical meetings on account of the ongoing nation-wide lockdown and social distancing to tackle COVID 19, the Ministry of Corporate Affairs (MCA) had earlier allowed all Board meetings including meetings on items where the physical presence of directors is otherwise required, to be conducted through VC or OAVM till June 30 2020. Considering the similar relaxations are required for passing members' resolutions, the MCA vide General Circular No. 14/2020 dated April 08, 2020 has allowed companies to hold EGM through VC or OAVM and the recorded transcript of the same shall be maintained in safe custody by the company. This relaxation is valid till June 30, 2020.

- ### Extention in holding of Annual General Meetings (AGM)

  As per the provisions Section 96 of the Companies Act, 2013 a company has to hold its AGM within a period of six months (nine months in case of first AGM) from the closure of the financial year and not later than a period of 15 months from the date of last AGM.

  Looking at situation on account of COVID 19, MCA has given a 3 months extension to hold an AGM to the companies whose financial year (other than first financial year) has ended on December 31, 2019.

  Therefore, the companies whose financial year has ended in December 2019 may hold their AGM by September 30, 2020.

- ### Extension for names reserved and resubmission of forms

  In view of the current situation, MCA has extended timelines for filing name reservation or incorporation of companies/LLP.

  - In case where name applied for the Company/ LLP, whether for incorporation or change of name, is expiring between March 15, 2020 to May 03, 2020, the extension of **20 days** beyond May 03, 2020 is granted.

  - In case where e-form for incorporation of Company/LLP or for change of name is to be resubmitted between March 15, 2020 to May 03, 2020, the extension of **15 days** beyond May 03, 2020 is granted.

2. Under Foreign Exchange Management Act 1999

• Relaxation in realization and repatriation of export proceeds

In view of the COVID 19 outbreak, the Reserve Bank of India ('RBI') vide circular No. 27 dated April 01, 2020 has provided extension from existing **nine months** to **fifteen months** for realization and repatriation to India of the amount representing the full export value of goods/ software/ services exported. This extension is applicable on the exports made up to July 31, 2020.

Further, the period of realization and repatriation of the export value of goods exported to warehouses established outside India **remain unchanged.**

• Amendment in Foreign Exchange Management (non-debt instruments) rules, 2019 (referred as ndi rules)

- **FDI from China, Bhutan, Bangladesh, Afghanistan, Myanmar, Nepal, and Pakistan require Government Approval**

In order to curb opportunistic takeovers or acquisitions of Indian companies trading on low valuation due to current Covid 19 pandemic, the Department for Promotion of Industry and Internal Trade ('DPIIT') has issued a Press Note No. 3 (2020 series) on April 17, 2020 to amend the Consolidated FDI Policy, 2017.

In According to the Press Note, an entity belonging to a country which shares a land border with India **viz., Bhutan, Bangladesh, China, Afghanistan, Myanmar, Nepal, and Pakistan,** going forwards, can invest only under the Government route, regardless of the sector/activity in which the investment is proposed to be done. In case, where the beneficial owner of investment is situated in or is a citizen of any of these countries, the same provision shall apply, i.e., prior Government approval shall be required.

The said approval requirement shall also apply to transfer ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in beneficial ownership falling within the hands of individuals/ entities belonging to countries as stated above shall also require Government approval.

These changes have been incorporated in NDI Rules vide notification of Foreign Exchange Management (Non-Debt Instruments) Amendment Rules, 2020 and are effective from April 22, 2020.

- **Acquisition of shares by Person Resident outside India (PROI) through renunciation of Right by Person Resident in India (PRI)**

In terms of the extant NDI Rules, PROI is allowed to invest in equity instruments of an Indian Company in exercise of a right renounced to him by a PRI. However, said PROI must hold the equity instruments so acquired on a non-repatriation basis only i.e. he cannot take the sale proceeds of such investments outside India.

The Department of Economic Affairs, Ministry of Finance vide notification dated April 27, 2020 has amended NDI Rules to allow investment through such renunciation without Non-Repatriation requirement provide the valuation norms, which are otherwise not applicable under Rights Issue, are complied with.

- **FDI in Insurance Sector**

Department for Promotion of Industry and International Trade ('DPIIT') on February 21, 2020 had issued Press Note No. 1 (2020 series), where the FDI Policy was amended to allow Intermediaries or Insurance Intermediaries including insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrator, Surveyors and Loss Assessors to avail foreign direct investments up to the extent of 100 % of the capital contribution under Automatic Route.

The Department of Economic Affairs, Ministry of Finance has issued a Notification dated April 27, 2020 to amend Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 and notify the proposed amendment in FDI Policy.

- **Applicability of sourcing norms in case of Single Brand Retail Trade (SBRT)**

  The NDI rules allow FDI up to 100% in SBRT (49% under Automatic Route and beyond that under approval route). In respect of proposals involving foreign investment beyond 51 percent, sourcing of 30 percent of the value of goods purchased is required to be done from India. The Government has provided exemption from applicability of such sourcing norms till 3 years from commencement of the business **i.e. opening of the first store** for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge technology and where local sourcing is not possible. The change in NDI Rules now allows that exemption till 3 years form the date of opening of first store **or start of online retail,** whichever is earlier.

3. Other important regulatory areas

• Modified Electronics Manufacturing Clusters (EMC 2.0) Scheme

With a view to promote industrialization and growth of electronics manufacturing in the country, the Government notified **Electronic Manufacturing Clusters (EMC) Scheme in October, 2012** to provide support for creation of world-class infrastructure for attracting investments in **Electronics Systems Design and Manufacturing (ESDM) sector,** which was closed for fresh application from October, 2017.

Looking at the encouraging response of stakeholders and their intent to set up manufacturing operations in EMCs, Ministry of Electronics and Information Technology, has therefore proposed to introduce a **Modified Electronics Manufacturing Clusters (EMC 2.0) Scheme** dated April 01, 2020 to compliment the efforts put-in by the Government to make India an Electronics Manufacturing Hub as envisaged under **"Digital India"** and **"Make in India"** initiatives.

Under **Modified Electronics Manufacturing Clusters (EMC 2.0) Scheme,** EMC would be established to create infrastructure with common facilities and amenities in EMC projects and upgrade the infrastructure in Industrial Estates / Parks / Areas as Common Facility Centre (CFC) for attracting investment in electronics manufacturing.

Further, the financial assistance of up to 50% and 75% of the project cost subject to a ceiling based on the area, will be given for setting up both Electronics Manufacturing Clusters (EMCs) and Common Facility Centers (CFCs) respectively.

• Scheme for promotion of manufacturing of electronic components and semiconductors (specs)

To promote "Make in India" and "Digital India" program of Government of India, Ministry of Electronics and Information Technology (MEITY), Government of India, has launched a "Scheme for promotion of manufacturing of electronic components and Semiconductor" ('SPECS'), to help offset the disability for domestic manufacturing of components and semiconductors and strengthen the electronics manufacturing ecosystem in the country.

The Scheme proposes to provide financial incentive of 25% of capital expenditure, over and above the incentives offered by the state government or any other local body for the manufacturing of listed goods that constitute the supply chain of an electronic product under this Scheme. The SPECS will be open for applications initially for 3 years from the date of its notification. The applications received under the scheme will be appraised on an ongoing basis and implementation will continue as per the approvals accorded under the scheme.

• Production Linked Incentive Scheme (PLI) for large scale electronics manufacturing (april 01, 2020)

The Production Linked Incentive Scheme (PLI) for Large Scale Electronics Manufacturing is a financial incentive to boost domestic manufacturing and attract large investments in the electronics value chain including electronic components and semiconductor packaging.

The Scheme proposes to provide an incentive of 4% to 6% on incremental sales (over base year [FY19-20]) of goods manufactured in India and covered under target segments, viz. Mobile phones and specified electronic components, to eligible companies for a period of five years subsequent to the base year. The Scheme shall only be applicable for manufacturing of target segments namely mobile phones and specified electronic components.

GST

1. Clarification on GST Refund related issues

- Removal of the restriction on clubbing of tax periods across Financial Years;
- Refund of tax paid on supplies other than zero rated supply will now be admissible proportionately in the respective original mode of payment;
- Refund of accumulated ITC shall be restricted to the ITC in respect of invoices, the details of which are reflected in the FORM GSTR-2A of the applicant; and
- New requirement to mention HSN/SAC in Statement of Invoices is required.

(Circular No.135/05/2020 - GST dated the 31st March,2020)

2. Expeditious disposal of refund claims under GST

- All pending GST refunds including Integrated GST ('IGST') refunds shall be expeditiously processed on merits, considering all the relevant legal provisions and circulars.
- All communication must be done using official email IDs, since the prescribed process does not warrant any physical submission of documents and any such practice must be avoided

  Instructions already issued in this regard by the Ministry of Finance to Principal Chief Commissioners/ Chief Commissioners of Central Tax & GST All Principal Chief Commissioners to dispose off all such refund claims by 30 April 2020

(Instruction No. 2/1/2020-GST dated the 9th April,2020)

3. Date for opting Composition Scheme Extended and Cumulative application of condition in rule 36(4)

- Due Date for opting for composition scheme for the FY 2020-21 is extended to 30 June 2020 and the person shall furnish the statement in FORM GST ITC-03 upto 31 July 2020; and
- Condition of restricted availment of ITC has been made cumulative for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months.

(Notification No. 30/2020 – Central Tax dated the 3rd April,2020)

4. Extension in other Due dates and Validity of E-Way bill

- Due dates for issue of notice, notification, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents, time limit for any compliance under the GST laws where the time limit is expiring between 20 March 2020 to 29 June 2020 has been extended to 30 June 2020; and
- Where an e-way bill has been generated under rule 138 of the Central Goods and Services Tax Rules, 2017 and its period of validity expires during the period 20 March 2020 to 15 April 2020, the validity period of such e-way bill shall be deemed to have been extended till the 30 April 2020.

(Notification No. 35/2020 – Central Tax dated the 3rd April,2020)

5. Introduction of new Form PMT-09

- A new Form PMT-09 has been issued by Central Board of Indirect Taxes and Customs ('CBIC') under GST law which allows a registered person to transfer any amount of tax, interest, penalty, fee or other amount available in the electronic cash ledger to the electronic cash ledger for integrated tax, central tax, State tax, effective from 21 April 2020.

(Notification No. 31/2019 – Central Tax dated the 28th June,2019)

6. Clarifications on Implementation of provision of GST law:

- **Advance received against which invoice is issued before supply of service and which subsequently got cancelled**

  In this case the supplier is required to issue a Credit Note and shall declare the details of such credit notes in the return for the month during which such credit note has been issued and the tax liability shall be adjusted as per prescribed conditions. However, in cases where there is no output liability against which a credit note can be adjusted, supplier may apply for refund under "Excess payment of tax, if any" through FORM GST RFD-01.

- **Advance received for a supply which subsequently got cancelled and for which receipt voucher is issued**

  In such cases the supplier is required to issue a Refund Voucher and shall apply for refund under the category "Refund of excess payment of tax" of GST paid on such advances through FORM GST RFD-01.

- **Goods supplied by a supplier under tax invoice which are returned by the recipient**

  In such a case the supplier is required to issue a Credit Note and shall declare the details of such credit notes in the return for the month during which such credit note has been issued. However, in cases where there is no output liability against which a credit note can be adjusted, supplier may apply for refund under "Excess payment of tax, if any" through FORM GST RFD-01.

- **Zero-rated supplies under Letter of Undertaking (LUT)**

  The taxpayer shall continue to make the Zero Rated Supply without payment of tax under LUT provided that the FORM GST RFD-11 for 2020-21 is furnished on or before 30 June 2020. Taxpayers may continue to quote the reference number of the LUT for the Financial Year 2019-20 in the relevant documents.

- **Extension of due date for return furnish in FORM GSTR- 7 and date of deposit of tax deducted**

  The due date for furnishing return in FORM GSTR- 7 along with deposit of tax deducted has been extended till 30 June 2020 and no interest shall be leviable if tax deducted is deposited by 30 June 2020.

- **Extension of due date for filing an application for refund expired on 31 March 2020**

  Due date for filing an application for refund falling during the period from 20 March 2020 to 29 June 2020, has also been extended till 30 June 2020.

(Circular No. 137/07/2020-GST dated the 13th April,2020)

7. Manner of Continuation of Merchandise Exports from India Scheme (MEIS) for shipments on or after 1 April 2020 and Introduction of the Remission of Duties and Taxes on Exported Products (RoDTEP) Scheme

- Benefits under MEIS for any item/tariff line /HS Code currently listed in Appendix 3B, will be available only up to 31 December 2020;
- Any item/tariff line/HS code when notified to be covered under RoDTEP Scheme prior to 31 December 2020 would be removed from coverage under MEIS; and
- Detailed operational framework for RoDTEP Scheme to be notified separately;

(DGFT Trade Notice: 03/ 2020-21 dated the 15th April,2020)

8. Expeditious disposal of pending Customs refunds and drawback claims

- Implementation of "Special Refund and Drawback Disposal Drive" till 30 April 2020, emphasizing on priority processing of Customs refunds and drawback claims that are pending as on 7 April 2020.
- All deficiency memos may be reviewed and refund / drawback may be considered on merit
- Instructions already issued in this regard by the Ministry of Finance to Principal Chief Commissioners/ Chief Commissioners of Customs

(Instruction No. 03/2020-Customs dated the 9th April,2020)

9. Schemes Newly Introduced:

National Policy on Electronics ('NPE') 2019, proposed by the Ministry of Electronics and Information Technology ('MeitY'), was approved by the Union Cabinet in February 2019. The following schemes have been notified in this regard:

- **Production Linked Incentive Scheme For Large Scale Electronics Manufacturing ('PLI Scheme')** - Incentive of 4%-6% on incremental sales of goods manufactured in India and covered under target segments (mobile phones and specified electronic components) to eligible companies, for a period of five years subsequent to the base year (FY 2019-20) (subject to prescribed conditions).

(Notification No. W-28/1/2019-IPHW-MeitY dated the 1st April,2020)

- **Scheme For Promotion Of Manufacturing Of Electronic Components And Semiconductors ('SPECS')** - SPECS provides for financial incentive of 25% on capital expenditure for specified electronic goods that comprise the downstream value chain of electronic products i.e., electronic components, semiconductor/ display fabrication units, ATMP units, specialized subassemblies and capital goods for manufacture of aforesaid goods, all of which involve high value added manufacturing.

(Notification No. W-18/30/2019-IPHW-MeitY dated the 1st April,2020)

- **Modified Electronics Manufacturing Clusters (Emc 2.0) Scheme ('MEMC Scheme')** - Under MEMC, Electronic Manufacturing Clusters ('EMCs') would be established to create infrastructure with common facilities and amenities in EMC projects and upgrade the infrastructure in Industrial Estates / Parks / Areas as Common Facility Centre ('CFC') for attracting investment in electronics manufacturing.

(Notification No. 36(7)/2018-IPHW (Vol. II) dated the 1st April,2020)

10. Advance Rulings & Judgements:

- **Rajasthan Authority for Advance Ruling ('AAR') rules GST is payable on consideration paid to the directors**

The Rajasthan AAR has pronounced in the matter of M/s. Clay Craft India Private Limited that consideration paid to the directors (in the form of salary) will attract Goods and Services Tax ('GST') under reverse charge mechanism ('RCM').

M/s. Clay Craft India Private Limited
(Advance Ruling No. RAJ/AAR/2019-20/33 dated 20 February,2020)

- **Gujarat AAR rules Credit of goods supplied free of cost and insurance/ maintenance of motor vehicles are not allowed**

The Gujarat AAR has pronounced in the matter of M/s. Moksh Agarbatti Co. that GST credit in respect of goods supplied free of cost for marketing/ promotion, non-monetary incentives provided to distributers and insurance/ maintenance of motor vehicles purchased for transport of Director and Employees are not allowed.

M/s. Moksh Agarbatti Co.
(Advance Ruling No. GUJ/GAAR/R/14/2019 dated 23 August,2019)

- **Gujarat AAR rules GST Rate for the 'Supply of Room or unit accommodation services by hotels' would be determined according to declared tariff for the room**

- The Gujarat AAR pronounced in the matter of M/s. Mangaldas Mehta and Co. Limited that GST Rate for the 'Supply of Room or unit accommodation services by hotels' would be determined according to declared tariff for the room, and GST at the rate so determined would be levied on the entire amount charged.

- Supply of airport pickup/ drop services, laundry and heritage walk services shall be taxable @18%

M/s. Mangaldas Mehta and Co. Limited
(Advance Ruling No. GUJ/GAAR/R/15/2019 dated 28 August,2019)

- **GST payable on letting out of residential complex to be further used for running paying guest facility**

  The Authority for Advance Ruling ('AAR) in the State of Karnataka in the matter of Sri. Taghar Vasudeva Ambrish ruled that GST is payable on letting out of residential complex to be further used for running paying guest facility. Such letting out of residential complex does not fall under exemption prescribed under GST legislation for “Services by way of renting of residential dwelling for use as residence”.

Sri. Taghar Vasudeva Ambrish
(Advance Ruling No. KAR ADRG 17/2020 dated 23 March,2020)

- **Gujarat AAR rules GST Rate for the 'Supply of Room or unit accommodation services by hotels' would be determined according to declared tariff for the room**

- The Gujarat AAR pronounced in the matter of M/s. Mangaldas Mehta and Co. Limited that GST Rate for the 'Supply of Room or unit accommodation services by hotels' would be determined according to declared tariff for the room, and GST at the rate so determined would be levied on the entire amount charged.

- GST shall also be levied on restaurant services provided, at applicable rates, to the guest who stays at hotel as well as to any outsider who comes just to eat at the restaurant.

- Supply of airport pickup/ drop services and laundry' and heritage walk services shall be taxable @18%.

- In case different room tariff is declared for different seasons or periods of the year, GST Rate would be determined accordingly.

M/s. Mangaldas Mehta and Co. Limited,
(Advance Ruling No. GUJ/GAAR/R/15/2019 dated 28 August,2019)

- **Bangalore AAR ruled that Computer Software shall be treated as Goods**

- The Applicant was engaged in purchase of software from their principal partner and supplying the same to their customers. The principal partner delivers the Software to the customer directly by providing the License Keys to download on line and to run the Software. The software supplied by use could be used by the customers in different fields depending on their requirement. In short, it is a package software and not tailor made one, to suit individual requirement. Summarily, the applicant states that these softwares as "pre-designed" and "pre-developed" and the usage of the software is controlled through "encryption keys".

- The Applicant inter-alia sought a ruling on whether the software supplied by the applicant qualifies to be treated as Computer software resul ting in Supply of goods. The AAR ruled that the supply of software supplied by the applicant which is not designed and developed specific to any customer and sold without any customisation, qualifies as "supply of goods" and "supply of computer software as goods".

M/s. Solize India Technologies Private Limited
(Advance Ruling No. KAR ADRG 25/2020 dated 23rd April,2020)

Compliance Calendar

Direct Tax

Due Date	Particulars
7th May 2020	Payment of TDS - For the period 1st April 2020 to 30th April 2020 (Reduced Interest rate of 9% p.a. shall apply) (No late fee /penalty shall apply)
	Payment of Equalisation Levy - For the period 1st April 2020 to 30th April 2020 (Reduced Interest rate of 9% p.a. shall apply) (No late fee /penalty shall apply)
15th May 2020	Issuance of TDS certificate in Form 16D for tax deposited u/s 194-M (TDS on payment made to contractors) in the month of March 2020 - tax deduction in March 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 March 2020 - tax deduction in March 2020 (Due date has been extended to 30 June 2020) (No late fee /penalty shall apply)
	Issuance of TDS certificate in Form 16B for tax deposited u/s 194-IA (TDS on sale of immovable property) in the month of March 2020 - tax deduction in March 2020 (Due date has been extended to 30 June 2020) (No late fee /penalty shall apply)
	Furnishing of Quarterly statement of TCS deposited for the quarter ending on 31st March 2020 in form 27EQ (Due date has been extended to 30 June 2020)(No late fee/penalty shall apply)
30th May 2020	**Payment and furnishing of challan-cum- statement (Form 26QB) in respect of tax deducted under section 194-IA in the month of April 2020 (Due date has been extended to 30 June 2020) (No late fee /penalty shall apply)**
	Payment and furnishing of challan-cum-statement (Form 26QC) in respect of tax deducted under section 194-IB in the month of April 2020 (Due date has been extended to 30 June 2020) (No late fee /penalty shall apply)
	Payment and furnishing of challan-cum-statement (Form 26QD) in respect of tax deducted under section 194-M in the month of April 2020 (Due date has been extended to 30 June 2020) (No late fee /penalty shall apply)
	Submission of the Statement by the Non- Resident having Liaison Office("LO") in India for the Financial Year 2019-20 in the form No. 49C (Due date has been extended to 30 June 2020) (No late fee /penalty shall apply)
31st May 2020	Furnishing of Quarterly statement of TDS details for the deduction made for the quarter ending on 31st March, 2020 in form No. 24Q, 26Q and 27Q as applicable (Due date has been extended to 30 June 2020) (No late fee/penalty shall apply)
	Furnishing of the Annual Statement of Financial transaction("SFT") as required by the Section 285BA for the FY 2019-20 in form 61A (Due date has been extended to 30 June 2020) (No late fee/penalty shall apply)
	Furnishing of annual statement of reportable accounts required by 285BA for calendar year 2019 by reporting financial institutes in form No. 61B (Due date has been extended to 30 June 2020) (No late fee/penalty shall apply)
	Application for allotment of PAN in case of non-individual resident person which have entered into a financial transaction for more than Rs. 2,50,000 during the year FY 2019-20. Provided that the PAN has not been allotted to the person (Due date has been extended to 30 June 2020) (No late fee/penalty 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/ 30th April' 2020 (for the quarter Jan'20 –March'20). No interest or late fee if GSTR 1 for April 2020/ quarter Jan'20 –March'20 is filed on or before 30 June 2020.
GSTR- 3B	**Summary of inward and outward supplies and payment of tax**		Monthly	• 20th of the succeeding month for all the states & UTs by taxpayers having annual turnover of INR 5 Cr & above for the previous financial year; (Refer Note No- 1) • 22nd of the succeeding month for the taxpayers* with an annual gross turnover of less than 5 Cr in 15 specified States/UTs; **(Refer Note No- 1)** • 24th of the succeeding month for all the taxpayers** in specified 22 States/UTs**(Refer Note No- 1)**
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- 2)**	Input Service Distributor	Monthly	13th of the succeeding month **(Refer Note No- 2)**
GSTR- 7	**TDS Return (Refer Note No- 2)**	Person deducting TDS	Monthly	10th May'2020 **(Refer Note No- 2)** (for the tax deducted in the month of April 2020)
GSTR- 8	**TCS Return (Refer Note No- 2)**	E-Commerce Operators	Monthly	10th May'2020 (Refer Note No- 2) (for taxpayers liable to pay TCS for the month of April 2020)
GSTR- 9	**Annual Return**	Registered person	Annual	30th June'2020 (for the Financial year 2018-19)
GSTR-9C	**Audit report & reconciliation statement**	Registered Person	Annual	30th June'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:** Filing of GSTR 3B for April 2020 has been relaxed in the following manner:
  For Taxpayers having an aggregate turnover of more than INR 5 crores in the preceding financial year ('FY'), Interest would be Nil for first 15 days from the due date, and 9% thereafter till 24th June 2020. Also, there would be no late fee till 24th June 2020.
  For Taxpayers having an aggregate turnover of more than INR 1.5 crores and up to INR 5 crores in the preceding FY, interest or late fee shall not be charged if GSTR 3B is filed on or before 30 June 2020.
  For Taxpayers having an aggregate turnover of up to INR 1.5 crores in preceding FY, interest or late fee shall not be charged if GSTR 3B is filed on or before 06 July 2020.
  If GSTR 3B is filed after the relaxed dates, interest @ 18% would be charged from the original due date of filing of GSTR 3B.

- **Note No. 2:** For ISD, TDS and TCS return, the due dates for April 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

ECB-2	Monthly return of External Commercial Borrowings
FC-4	Annual Return of foreign Companies
Form 11	Annual Return for LLPs

About Us

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