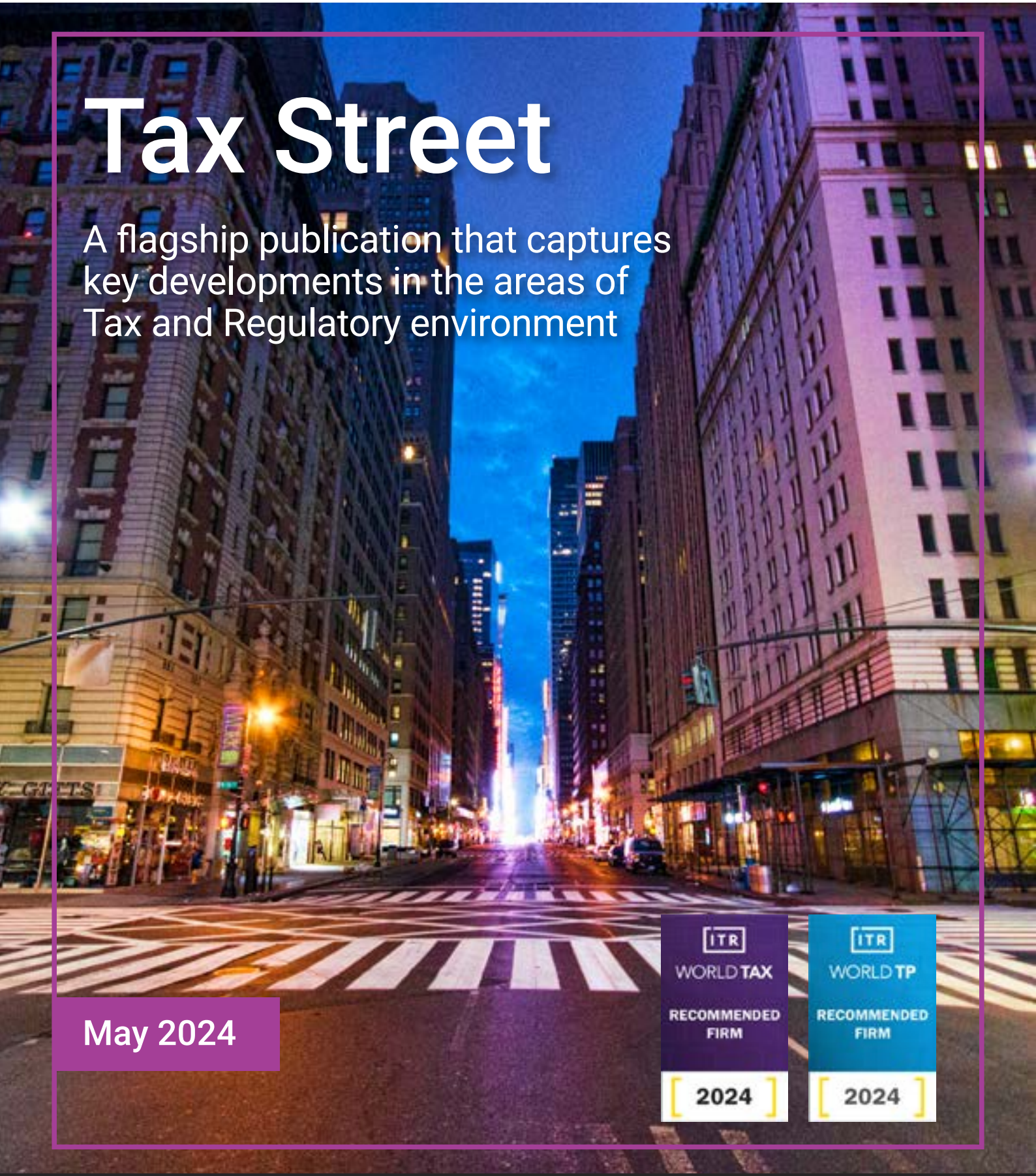
Tax Street

A flagship publication that captures key developments in the areas of Tax and Regulatory environment



May 2024

Introduction

Tax Street

We are pleased to present the latest edition of Tax Street – our newsletter that covers all the key developments and updates in the realm of taxation in India and across the globe for the month of May 2024.

- The **'Focus Point'** explores the aspects surrounding the situs of an intangible asset and its subsequent tax ramifications.
- Under the **'From the Judiciary'** section, we provide in brief, the key rulings on important cases, and our take on the same.
- Our **'Tax Talk'** provides key updates on the important tax-related news from India and across the globe.
- Under **'Compliance Calendar'**, we list down the important due dates with regard to direct tax, transfer pricing and indirect tax in the month.

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

Warm regards,
The Nexdigm Team

Focus Point

Situs of an Intangible Asset

In order for a jurisdiction to exercise its right to tax any income, there should be sufficient nexus between income and the said jurisdiction. The recent era has seen extensive discussion and legislative amendments over the taxation of shares by providing extensive clarification on the situs of shares. However, ***the taxation of intangible assets*** has long been a contentious issue. Historically, multinational companies have been developing, holding and registering their Intellectual Property Rights (IPRs) in developed countries, owing to their sophisticated intellectual property laws, while their core markets are in developing nations where they exploit the use of these IPRs. Thus, the company could be running its business in one jurisdiction, exploiting the consumers in another jurisdiction, using the IPRs of a third jurisdiction. The taxability of such IPRs would be the jurisdiction of the situs of its IPR. However, the involvement of multiple jurisdictions complicates the determination of its situs.

Factors arguable to justify the nexus of the situs of intangible assets

- **Jurisdiction where the IPR is registered:** The IPR may have been registered in a particular jurisdiction for its favorable tax and legal frameworks for the protection of intellectual property.
- **Ownership and development location:** The jurisdiction where the R&D team is deployed, considering the supply of necessary resources and available framework and ecosystem from the government of that jurisdiction.
- **Relative economic activity:** Jurisdictions where the economic benefits and exploitation of the IPR primarily occur.

Income tax's position

The current tax legislation does not provide a clear framework for determining the situs of an intangible asset. Unlike shares or interests in a company incorporated or registered outside India, where Explanation 5 to Section 9(1)(i) of the Income-tax Act, 1961 (the Act) offers guidance, no similar deeming fiction exists for intangible assets.

However, time after time, judicial precedents have tried to shed light on this issue.

The Delhi HC pronounced an important judgment in 2016 on this aspect, which involved the issue of taxability of transfer by a non-resident of trademarks originating outside India and licensed for use in India. The Delhi HC reversed the decision of the Authority for Advance Rulings (AAR), which had held that the situs of the assessee's trademarks were to be considered as located in India, and the gains on their transfer were taxable in India.

In the case of *CUB Pty Limited v. UOI & Ors [2016] 71 taxmann.com 315 (Del)*, the taxpayer, an Australian company, was engaged in the business of brewing beer. The company owned various trademarks and intellectual property rights (IPRs) related to its business. Through Brand License Agreements (BLAs), the taxpayer licensed these trademarks and IPRs to its subsidiaries in various jurisdictions, including a step-down subsidiary in India (I Co). The trademarks and IPRs were also registered in India. In 2006, the taxpayer entered into a composite sale-purchase agreement (ISPA) with X Ltd. The ISPA involved the transfer of shares of one of the taxpayer's downstream subsidiaries, along with the associated trademarks and IPRs, including those licensed to I Co. The taxpayer approached the Authority of Advanced Ruling (AAR) to determine the taxability of the sale of licenses and IPRs in India. The AAR held that income from

the transfer of rights, title, and interest in trademarks and IPRs was accrued in India. The basis of the same *inter alia* included:

- The IPRs had a tangible presence in India.
- The registration of these trademarks and IPRs in India further established their connection to the jurisdiction.
- The brands had generated goodwill in India due to I Co's nurturing.

The taxpayer challenged the ruling of the AAR before the Delhi HC.

It was held that in the absence of specific provisions for taxing IPRs, internationally accepted principles should be applied to determine the situs of the intangible asset. The principle of *'mobilia sequuntur personam'* may be used to establish the situs of the IPRs, meaning that the situs of the owner of the intangible asset is considered the closest approximation of the situs of the asset itself. Since the situs of the IPRs is not located in India, the income derived from the transfer of rights, title, or interest in the IPRs is not subject to taxation in India.

In April 2024, ***the Mumbai Tribunal issued a ruling on a similar precedent,*** holding that the situs of the owner of an intangible asset is the closest approximation of the situs of the intangible asset itself. The pertinent facts of the case are covered as follows:

In the case of *Star Television Entertainment Ltd vs DCIT [ITA No. 1814/Mum/2014] (Mumbai ITAT),* the taxpayer, a Hong Kong resident, transferred a television channel (Channel) to another sister concern (A Co). The taxpayer did not offer the gain from such transactions to tax in India, as the transaction was between non-residents and the Channel was not an asset situated in India. However, the Assessing Officer (AO) observed the following:

- There was a strong business connection of the transferred asset to India due to its ability to continually and regularly generate income from India.
- The basic elements of the asset viz. brand name, logo, contents, permits & licenses, etc., were all located in India; therefore, the asset being a 'Channel' is located in India.

The Tribunal observed that in the instant case, the Channel was an intangible asset. On perusal of the down-linking license obtained from the Ministry of Information and Broadcasting of India to operate the Channel in India, it was established that the ownership of the Channel was outside India. Relying on the ruling of the Delhi HC of CUB (Supra), the Tribunal held that the Channel was not an asset situated in India since it was owned by a person outside India (i.e., the taxpayer) and, therefore, the situs of the asset was also outside India. Accordingly, the income arising out of the transfer of Channel, being an asset outside India, would not fall within the provisions of Section 9(1)(i) and, accordingly, is not taxable in India.

In light of the above judicial precedents, the current legal position is that the situs of the owner of an intangible asset is considered the situs of the intangible asset itself. Some further judicial precedents from the HCs as well as the Apex Court in due course of time should help in adding further perspective to this issue.

Upcoming Events

Masterclass on GST and Customs- Key Issues and Recent Developments – Pune
20 June 2024
Sanjay Chhabria
https://bit.ly/4aWTr8U

Corporate, Commercial and M&A Summit 2024 – Mumbai
20 June 2024
Shraddha Shah
https://bit.ly/3RugcdA

GST and Customs- Key Issues and Recent Developments – Hyderabad
26 June 2024
Sanjay Chhabria
http://bit.ly/45oZ7Y2

Events and Webinars

7th National Direct Tax Summit & Awards 2024
6 June 2024
Maulik Doshi

Customs and Transfer Pricing Interplay
30 May 2024
Sanjay Chhabria & Maulik Doshi

Demystify the New Free Zone Tax Guide through case studies
30 May 2024
Trupti Mehta & Nishit Parikh

M&A Tax – Key considerations
28 May 2024
Maulik Doshi

Great Indian Tax Leaders & Awards
24 May 2024
Sanjay Chhabria

Input Service Distributor & Corporate Guarantee under GST
22 May 2024
Sanjay Chhabria & Hiren Vora

18th CFO Vision and Innovation Summit
6 June 2024
Subodh Dandawate & Sudarshan Saraf

From the Judiciary

Direct Tax

Will the Italian Court allow taxpayers to receive DTAA benefits in the absence of a TRC?

Teobaldo Noschese
TS-838-FC-2023 (ITL)

Facts

The taxpayer, an Italian national, relocated from Italy to the UAE. During his period of tax residency in the UAE, the taxpayer received a salary from his Italian employer. The salary paid to him was subject to a withholding tax in Italy.

The taxpayer applied to the Italian Revenue authorities for a refund of the withholding tax, citing Article 15 of the Italy-UAE Double Taxation Avoidance Agreement (DTAA).

The Italian Revenue authorities requested the taxpayer to provide various documents, including a Tax Residency Certificate (TRC), to support his claim for DTAA benefits. In the absence of the TRC, the Italian Revenue authorities denied the taxpayer's request for a refund.

Aggrieved by the decision of the Revenue authorities, the taxpayer approached the Provincial Tax Commission of Pescara, which also denied his request. The taxpayer then appealed to the Regional Tax Commission of Abruzzo, which ruled in his favor. However, dissatisfied with this ruling, the Revenue authorities in Italy subsequently appealed to the Italian SC.

Held

The Italian SC ruled in favor of the taxpayer. The SC held that a TRC was not the sole evidence required to prove tax residency for accessing treaty benefits; the taxpayer could also demonstrate his actual residence through other means.

Additionally, the SC determined that the income earned by the taxpayer in the UAE could not be taxed in Italy, as the taxpayer was considered a foreign tax resident for Italian purposes. The SC clarified that the existence of taxing power with the state (UAE in this case) was sufficient to grant an individual access to treaty benefits, and it was not necessary for the individual to be subject to tax in that state to seek such benefits.

Consequently, the SC directed the Italian Revenue authorities to refund the withholding tax amount to the taxpayer.

Our Comments

Similar to very few decisions in India, allowing tax treaty benefits in the absence of a TRC, it is interesting to see that the foreign Apex Courts are also favoring the taxpayer and not restricting benefits of treaties merely on the basis of TRCs.

Does mere advice without the application of professional judgment qualify as managerial or consultancy services and thus constitute Fees for Technical Services?

Lx Pantos India Private Limited
TS-345-ITAT-2024(DEL)

Facts

LX Pantos India Private Ltd. (Pantos India) an Indian company engaged in the business of providing logistic services. Pantos India entered into a 'Cooperation Agreement' with overseas logistics companies to provide transportation and customs clearing services in their respective countries.

Pantos India paid a certain sum to the overseas logistics companies and for FY 2019-20 without any Tax Deducted at Source (TDS).

During the assessment proceedings, the AO classified these payments as Fees for Technical Services (FTS) under the Act and various DTAAs, viewing the payments to overseas logistics companies as payments for advisory services.

Since Pantos India did not deduct TDS on the shipment clearing and forwarding charges paid to the overseas logistics companies under Section 195 of the Act, the AO disallowed these expenses under Section 40(a)(i) of the Act.

Held

In the given case, the Delhi Income Tax Appellate Tribunal (ITAT) held that no tax is deductible at source under Section 195 of the Act on payments made to an overseas logistics company for the rendition of logistics services.

Finding that the sole basis of the Revenue for holding that the payment made to the overseas logistics company is towards consultancy services is that, as per one of the terms of the contract executed between the assessee and the overseas parties, the said parties advised the assessee on change into tariff ratio.

ITAT observed that such advice would not partake the character of rendering consultancy service and that mere provision of such information would not be sufficient for treating all services as managerial or consultancy services. In this regard, ITAT ruled in favor of Pantos India by dismissing Revenue's appeal.

Our Comments

The case law in question revolves around a dispute where the tax authority misinterpreted the term "advice" as used in a contract. Rather than examining the context in which the word was used, the tax authority took a literal approach. This led them to disallow a payment made under the contract on the grounds that taxes were not deducted at source.

Transfer Pricing

Taxpayer failed to object to draft order before DRP, final order under Section 144C not appealable before ITAT

Skybridge Solutions Private Limited [TS-178-ITAT-2024(HYD)-TP]

Facts

The taxpayer, a software development and services company, filed its ITR for AY 21-22 and subsequently, the case was selected for scrutiny. Therefore, notice was issued under Section 143(2) and thereafter, a reference was made to the Transfer Pricing Officer (TPO) under Section 92CA(1) to determine the Arm's Length Price (ALP) for the transactions with Associated Enterprises (AEs).

The TPO made an upward adjustment via an order dated 31 October 2023. Consequently, a show cause notice was issued to the taxpayer on 9 November 2023 regarding the proposed adjustment, along with a penalty initiation under Section 270A. Since the taxpayer didn't respond to the notices, the draft assessment order was passed on 22 November 2023. The taxpayer was given 30 days to either accept the proposed variation or file objections with the DRP. However, no communication was received from the taxpayer within the stipulated timeframe. Therefore, it was assumed that the taxpayer has no objection and has accepted the draft order, and accordingly, the final assessment order was passed under Section 143(3) on 26 December 2023.

Taxpayer's Contention

The taxpayer submitted that its case falls within the ambit of Section 253(1)(d) of the Act and it was submitted that the draft assessment order passed by the AO was in pursuance of the directions issued by the DRP. Therefore, the present case is maintainable. In contrary to this, the learned Department Representative (DR) has drawn attention towards Section 144C(1) to 144C(5) of the Act and stated that the impugned assessment order passed by the AO was not passed pursuant to any of the directions issued by the DRP, but on account of the obligation cast on the AO by virtue of Section 144C(3) of the Act. There is no provision for filing an appeal against the order passed by the AO under Section 144C(3) of the Act before this Tribunal since the appeal was not made before DRP, therefore, the present appeal is not maintainable.

Held

After concluding all the facts, the ITAT verdicts that the order to be passed by the AO under Section 144C (3) of the Act is on account of the failure of the taxpayer to raise the objections against the draft assessment order. This obligation under the Act is not dependent upon the issuance of any direction by the DRP. Hence, the order passed by the learned AO was on account of independent obligation u/s 144C(3) of the Act and not on account of any direction issued by the DRP, therefore, no appeal lies against such order before this Tribunal.

Based on the above, the impugned order is not appealable before the Tribunal and therefore, the same shall be dismissed. In addition to this, the taxpayer had asked for liberty to approach any alternative forum or authority or Hon'ble HC having jurisdiction since sufficient time has been taken to file the present appeal before the Tribunal. In view of the above, liberty is granted to the taxpayer to file any other petition/appeal before any forum or authority or Hon'ble HC.

Our Comments

The said ruling outlines the need for the taxpayer to follow the timelines for filing the appeal before the appropriate authority. In case of any objection against the draft assessment order, the appeal has to be made to the DRP within 30 days of the draft assessment. In case the appeal has not been made before DRP, the taxpayer has the option to appeal before the Commissioner of

Income Tax (Appeals) [CIT(A)] within 30 days of the final assessment order passed by the AO.

Filing second MA against an order passed in an earlier MA not permissible under Section 254(2)

Astra Zeneca Pharma India Ltd [TS-177-ITAT-2024(Bang)-TP]

Facts

The taxpayer is engaged in the pharmaceutical business. During assessment proceedings for AY 2014-15, the Tribunal had issued the order against the Miscellaneous Application (MA) filed, wherein the Tribunal had given direction to AO to follow the earlier order of the Tribunal for AY 2013-14, where the issue has been decided in favor of the taxpayer.

Taxpayer's Contention

Revenue filed another MA against this order of the Tribunal involving AY 2014-15 by justifying that there is no res-judicata to proceedings; therefore, the order in MA is to be recalled. However, the taxpayer contended that the second MA cannot be entertained u/s 254(2) of the Act.

Held

ITAT had concluded that a second MA is not permitted under Section 254(2) of the Act since the Tribunal had not committed any error in directing the TPO/AO to follow the earlier order of Tribunal in AY 2013-14 for this AY 2014-15. Accordingly, since there is no mistake apparent from the record, the second MA filed by the Revenue has been dismissed.

Our Comments

The said ruling outlines that in case there's no mistake apparent from the records, a second MA isn't permissible under Section 254(2) of the Act. Furthermore, placing reliance on the earlier year order isn't any mistake apparent from the record.

Indirect Tax

Computation of limitation period for filing appeals under GST law.

Balaji Coal Traders vs. Commissioner, Commercial Tax, Lucknow & Ors. [TS-301-HC(ALL)-2024-GST]

Facts

- The jurisdictional State Tax authorities canceled the petitioner's GST registration, vide order dated 19 April 2022.
- Thereafter, the petitioner's application for revocation of cancellation was rejected, vide order dated 12 July 2022.
- The petitioner filed an appeal before the First Appellate Authority on 10 November 2022 as a recourse.
- However, the appeal was dismissed on the ground that the same had been filed one day after the expiry of the limitation period and by treating four months as 120 days with reference to the provisions of Section 107 of the Uttar Pradesh GST Act, 2017.
- The First Appellate Authority relied on the judgment of Hon'ble SC in the case of **Simplex Infrastructure Ltd vs. Union of India (Civil Appeal No. 11866/2018)** while refusing to condone the delay in view of the express provisions of the Act.
- Being aggrieved thereby, the petitioner approached Allahabad HC.

Ruling

- HC observed that the phrase *"from the date on which the said decision or order is communicated to such person"* in Section 107 is crucial as it marks the starting point of the limitation period for filing an appeal.
- The legislative intent behind this provision is to ensure that the aggrieved party has a clear and fair understanding of the decision or order before the clock starts ticking for the appeal period, remarked the HC.
- In this context, HC referred to Section 9 of the General Clauses Act, 1897, which specifically indicates that when calculating a time period that starts with the word *"from"*, the day of the event from which the period begins is excluded, and when the period ends with the word *"to"*, the last day of the period is included.
- Furthermore, stressing the importance of the meaning of individual terms "within" and "months" in the context of Section 107 of the UPGST Act, HC observed that the phrase *"within three months"* means that the appeal can be filed anytime from the date following the communication of the order until the end of the third month, ensuring that the appellant has the maximum possible time to prepare and file their appeal.
- It further highlighted that the law allows the appellant an additional period of one calendar month beyond the initial three months to file the appeal, subject to demonstration of sufficient cause, i.e., circumstances beyond the control of the appellant preventing them from filing the appeal within the stipulated time frame.
- In the present case, the petitioner received the order on 12 July 2022. Hence, the three month period would have begun on 13 July 2022 and expired on 12 October 2022 and the extended period would have expired on 12 November 2022. As a result, it appeared that the calculation made by the lower authorities was incorrect, thereby warranting the exercise of writ jurisdiction.
- In view of the above, HC set aside the order rejecting petitioner's appeal and directed the First Appellate Authority to allow the delay and hear the appeal on merits.

Our Comments

There has been a substantial rise in litigation in recent times owing to the conclusion of GST assessments and audits for the initial years. Given this, the present ruling reaffirms the settled principle of law that in computing the time limit for filing an appeal, the day on which the order is communicated shall be excluded. It should act as a guiding principle for taxpayers seeking to file appeals before the higher forums, including the GSTATs.

Articles

India-EFTA Trade & Economic Agreement: A Win-Win Deal
12 June 2024
Sanjay Chhabria | ET CFO
https://lnkd.in/dJSsUBKv

Navigating the New Trade Agreements: A Strategic Guide for Exporters
7 June 2024
https://lnkd.in/dGJSAsVm

Sec.2(22)(e) Deemed Dividend – Shareholders to Watch-Out!
31 May 2024
Maulik Doshi, Shraddha Shah, Mohammed Ali Memon | Tax Sutra
https://bit.ly/3VnTnJr

Substance and Significance of Beneficial Ownership
30 May 2024
https://lnkd.in/dQjPbc8x

Quotes and Coverage

GST collection breaches Rs 2 lakh crore-milestone: What this means for govt, tax reforms
1 May 2024 | The Times of India
Sanjay Chhabria
https://bit.ly/4ckREvg

Alerts

FTA issues Public Clarification on Director, Manpower and Visa Facilitation Services
6 June 2024
https://bit.ly/3yXFXwh

GST Trail May 2024
5 June 2024
https://lnkd.in/d9gKRGew

Synopsis of the new Corporate Tax Guide for Free Zone Person
24 May 2024
https://lnkd.in/gJYC5T7B

FTA announces mandatory UAE Pass-based login on the EmaraTax portal from September 2024
8 May 2024
https://bit.ly/4dEcili

Key Highlights of GST Notifications and Clarification Circulars – April 2024
6 May 2024
https://bit.ly/3QubFao

Tax Talk

Indian Developments

Direct Tax

Cost of Inflation Index notified by the Central Government

Notification S.O. 2103 (E) [NO. 44/2024/F.No.370142/10/2024-TPL] dated 24 May 2024

- To calculate capital gains under Section 48, the Cost of Inflation Index (CII) is notified by the Central Government at the beginning of every financial year.
- For FY 24-25, the provisional CII is 363, effective from 1 April 2024.

Indirect Tax

Customs

CBIC amends All Industry Rates of Duty Drawback effective from 3 May 2024

Circular No. 04/2024-Cus dated 7 May 2024 r/w Notification Nos. 33/2024-Cus (NT) dated 30 April 2024 and 77/2023-Cus (NT) dated 20 October 2023

The Central Board of Indirect Taxes and Customs (CBIC) has notified amendments to the All Industry Rates (AIRs) of Duty Drawback, which came into effect on 3 May 2024. The key changes have been summarized below:

- Enhanced Duty Drawback rates/ caps are introduced for specific items, including marine products, bags, handbags, trunks, suitcases, articles of bed linen, radar apparatus, radio navigational aid apparatus, and unmanned aircraft.
- AIRs are introduced for specified defense sector products under Chapters 72, 75, 81, 87, 88, and 93.
- Furthermore, new tariff items have been created to differentiate export products better, viz. "Breaded shrimp/prawn", "Breaded Squids", and "Sports gloves, other than Golf gloves, made of leather" and "Sports gloves, other than Golf gloves, made of leather in combination with textile materials."
- The cap has been rationalized for "Golf Gloves made of leather in combination with textile materials" under TI 420304.

Government imposes Anti-dumping Duty on import of 'Pentaerythritol'

Notification No. 08/2024-Cus (ADD) dated 16 May 2024

The CBIC has imposed Anti-dumping Duty (ADD) on the import of 'Pentaerythritol' originating from China PR, Saudi Arabia, and Taiwan at varied rates. The duty is applicable for a period of five years and is payable in Indian currency.

Foreign Trade Policy

Regularization fees for bona fide export obligation defaults inapplicable to Advance Authorizations issued pre-April 2023

Policy Circular No. 02/2024 dated 3 May 2024

DGFT has addressed the applicability of regularization fees prescribed for bona fide defaults in export obligations under Advance Authorizations under Handbook of Procedure (HBP) 2023. It has been clarified that the requirement of paying 3% amount on account of non-achievement of minimum Value Addition [as mentioned in Para 4.49(b) of HBP 2023], and amount equivalent to 10% of CIF value of unutilized imported material [as given in Para 4.49(a)(ii) of HBP 2023], is applicable only in case where the Advance Authorization is issued on or after 1 April 2023.

Thus, Authorizations issued prior to this date will be governed by the relevant provisions of HBP under which they were issued for regularization of defaults.

However, this clarification would not warrant a refund of fees already paid by Authorization-holders.

Application for review of Norms Committee decisions can be filed till December 2024

Policy Circular No. 03/2024 dated 30 May 2024 r/w Addendum dated 31 May 2024

It has been clarified that Advance Authorization holders may file their review applications till 31 December 2024 against decisions of the Norms Committee taken before 1 April 2023, in terms of Para 4.17 of HBP 2023. No such review will be entertained beyond this date.

Furthermore, the review will be applicable only for Advance Authorizations issued on or after 1 April 2019 and no review decision has already been taken by the Norms Committee.

Tax Talk

Global Developments

Direct Tax

Statement by the OECD Secretary-General on the 16th meeting of the Inclusive Framework on BEPS[1]

Excerpts from oecd.org – dated 30 May 2024

The Organization for Economic Cooperation and Development (OECD) Secretary-General Mathias Cormann has welcomed the commitment of the 147 Members of the Inclusive Framework on Base Erosion and Profit-Shifting (BEPS) to keep working to resolve any remaining issues in time to start the signing process of the Multilateral Convention (MLC) implementing Amount A of Pillar One by the end of June this year.

This Inclusive Framework plenary meeting has clarified the outstanding issues in its ongoing effort to reach an agreement on a fairer allocation of taxing rights globally.

It has also been an opportunity to reflect on the significant progress already realized over more than a decade of multilateral discussions on addressing the tax challenges arising from digitalization and globalization of the economy.

Advances in global tax cooperation have included the minimum standards agreed upon in the initial BEPS project: reforming harmful tax practices, reducing treaty abuse, improving dispute resolution, and increasing tax transparency through the exchange of the Country-by-Country Reporting (CbCR) on the largest multinationals, where we remain committed to ensuring that all countries can benefit.

Importantly, the Global Minimum Tax agreed under Pillar Two is in the process of coming into force in countries worldwide and will raise significant revenues of up to USD 192 billion per year for both developed and developing countries.

With the significance of these achievements in mind, the OECD will continue to support the Members of the Inclusive Framework toward a successful conclusion of their necessary work.

Transfer Pricing

Pillar Two – Minimum Global Tax

The OECD Inclusive Framework on BEPS has been interminably evolving with burgeoning developments in agreements on a two-pillar approach to help address tax avoidance, coherence of international tax rules and inculcating a transparent tax environment. The Pillar Two forms one of the elements to sew up the intent of OECD, thereby ensuring income is taxable at an appropriate rate.

On 20 December 2021, the OECD/G20 Inclusive Framework on BEPS released the Model Global Anti-Base Erosion (GLoBE) rule (Model Rules), divulging the common approach for Global Minimum Tax at 15% for multinational companies with a turnover exceeding EUR 750 million. The OECD published a consolidated commentary on 25 April 2024 in response to several discussions. It will be applicable to cross-border profits of large multinational corporations with a significant economic footprint across the world, befitting the rules of the OECD.

Pillar Two encompasses three rules applicable to multinational corporations – Income Inclusion Rules (IIR), Under-Taxed Profit Rules (UTPR) and Qualified Domestic Minimum Top-Up Tax

1. https://www.oecd.org/tax/statement-by-the-oecd-secretary-general-on-the-16th-meeting-of-the-inclusive-framework-on-base-erosion-and-profit-shifting-beps.htm

(QDMTT) rules. Many of 140 countries have supported the framework, inclusive of the EU, and enacted or are expected to enact rules set out under Pillar Two. Hereunder stating supporting developments incorporated and adhered to by various jurisdictions in relation to OECD Pillar Two:

Belgium: Tax Authorities released GLoBE registration terms to be adhered to by MNEs and large-scale domestic groups. Belgium Ultimate Parent Entity (UPE) or Constituent Entity (CE) is responsible for registering with the Belgium Commercial Register upon being covered within the scope of minimum tax rules. Alongside, the mandate of filing an additional form for IIR and UTPR has been introduced. Also, it has adopted modified GLoBE computation; revised charging provisions for partially owned parent entities; introducing QDMTT permanent safe harbor, transactional UTPR safe harbor and safe harbor for non-material CE; and incorporating hybrid arbitrage rules in CbCR safe harbors.

Greece: Enacted legislation for implementing a minimum global tax on 5 April 2024 in line with the EU directives, thereby subjecting multinationals exceeding the threshold to 15% minimum global tax. It incorporated CbCR, safe harbor, UTPR safe harbor and the permanent QDMTT safe harbor through the enactment of legislation.

Iceland: Published Fiscal Strategy Plan confirming the intent to implement Pillar Two by year-end for a planned entry in 2025. The object behind the implementation is to boost tax revenue in the jurisdiction.

Estonia: Legalized and implemented EU minimum tax directive (EU Directive), wherein it has deferred the application of IIR and UTPR till 31 December 2029. Estonia has partially transposed EU Directives having restrictive applications, wherein Estonia's UPE will be required to designate a foreign constituent entity to submit GLoBE Information Return (GIR). Consecutively, mandating local constituent entities to exchange information within the group for filing of GIR.

Norway: Issued public consultation paper in 2023 aligning with EU Directives and implemented Pillar Two in Supplementary Tax Act effective from 1 January 2024. However, UTPR will be implemented later, whereas QDMTT and IIR will be applicable to companies, undertakings, associations, and units that are part of both multinational and national groups exceeding the threshold. Adhering to new rules, covered groups will be required to file the first reporting by June 2026.

Spain: Published draft legislation to implement Pillar Two aligning with EU Directives to establish top-up tax ensuring global minimum tax being charged at 15%. The draft exchanges views on the eligible taxpayer, tax base calculation, information return, complementary tax management and insurance companies.

Switzerland: Several Swiss cantons have changed corporate tax rates in line with the latest enactment of Pillar 2 in Switzerland, effective from 2024. The corporate tax rate increased from 13.8% to 15% in Canton of Schaffhausen (for profits higher than CHF 15 million) and 14% to 14.7% in Canton of Geneva. Canton of Grisons proposed a draft bill rewarding companies with higher value creation, robust R&D, and enhanced environmental sustainability.

Indirect Tax

No consensus amongst EU on ViDA proposal

Excerpts from various sources

The Economic and Financial Affairs Council (ECOFIN) of the European Union (EU) met on 14 May 2024 to discuss changes in the EU VAT Rules as part of the VAT in the Digital Age (ViDA) initiative, based on the revised proposal issued on 8 May 2024.

The ViDA proposal aims to fundamentally change the VAT system across three pillars, viz:

a. E-invoicing and digital reporting – to be implemented from 1 July 2030, would affect all businesses engaged in B2B cross-border trade within the EU;

b. Platform transactions – to be implemented from 1 July 2027, would affect online platforms mainly in the accommodation and passenger transport sectors;

c. Single VAT registration – most provisions would be implemented from 1 July 2027, but an earlier effective date of 1 January 2026 has been prescribed for B2C supplies of electricity, natural gas, and cooling/ heating by non-established suppliers.

However, the Council Ministers did not reach an agreement and the discussions will now continue on 21 June 2024 to reach a compromise that all 27 Member States can approve.

No cut in high VAT on food, says Greek Finance Minister

Excerpts from various sources

The Greek Finance Minister has affirmed that the new government has no plan to cut the tax rate on food. The standard VAT rate in Greece is 24%, with certain goods and services eligible for reduced rates of 13% and 6%. As per the Minister, the government will review the rates at the end of 2024 to see if they can be reduced.

Kenya to introduce new tax on electric vehicles and financial transactions

Excerpts from various sources

The Kenyan government is poised to introduce new taxes on certain electric vehicles and their batteries. The proposed Finance Bill 2024 includes provisions for VAT on electric bikes and buses, as well as solar and lithium-ion batteries. Additionally, an eco-tax is slated to increase the price of a 60 kg solar battery in Kenya by USD 312, as per the Associated Battery Manufacturers (ABM).

Furthermore, the Finance Bill proposes a 16% VAT on financial transactions covering services such as credit and debit card issuance, money transfers, foreign exchange transactions, and cheque handling.

Philippines proposes new VAT on digital services

Excerpts from various sources

The Senate has approved the bill to impose 12% VAT on digital service suppliers, whether they are residents or non-residents. This will be done by amending the National Internal Revenue Code (Tax Code) to expressly include "digital services" and "digital service providers" as among the transactions and entities subject to VAT. A non-resident digital service provider shall not be allowed to claim creditable input tax.

Compliance Calendar

Direct Tax
Indirect Tax

7 June 2024

- Due date for deposit of Tax deducted/collected for May 2024. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan.
- Securities Transaction Tax - Due date for deposit of tax collected for May 2024.
- Commodities Transaction Tax - Due date for deposit of tax collected for May 2024.
- Form 27C - Declaration under sub-section (1A) of Section 206C of the Act, to be made by a buyer for obtaining goods without collection of tax for declarations received in May 2024.
- Collection and recovery of equalisation levy on specified services in May 2024.

10 June 2024

- GSTR-7 for May 2024 to be filed by taxpayers liable to Tax Deduction at Source (TDS).
- GSTR-8 for May 2024 to be filed by taxpayers liable to Tax Collection at Source (TCS).

11 June 2024

GSTR-1 for May 2024 to be filed by all registered taxpayers not under the QRMP Scheme.

13 June 2024

- GSTR-6 for May 2024 to be filed by Input Service Distributors (ISDs).
- Uploading B2B invoices using Invoice Furnishing Facility (IFF) under the QRMP Scheme for May 2024 by taxpayers with aggregate turnover of up to INR 50 million.
- GSTR-5 for May 2024 to be filed by Non-Resident Foreign Taxpayers.

14 June 2024

Due date for issue of TDS Certificate for tax deducted under Section 194-IA, 194-IB, 194M, & 194S in April 2024.

15 June 2024

- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for May 2024.
- Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending 31 March 2024.
- First instalment of advance tax for the AY 2025-26.
- Certificate of tax deducted at source to employees in respect of salary paid and tax deducted during FY 2024-25.
- Statement showing particulars of perquisites, other fringe benefits or amenities and profits in lieu of salary with value thereof during FY 2023-24.
- Due date for furnishing statement in Form No. 3BB by a stock exchange in respect of transactions in which client codes have been modified after registering in the system for May 2024.
- Due date for furnishing statement in Form No. 3BC by a recognized association in respect of transactions in which client codes have been modified after registering in the system for May 2024.
- Statement to be furnished in Form No. 64D by Alternative Investment Fund (AIF) to Principal CIT or CIT in respect of income distributed (during previous year 2023-24) to unit holders.

20 June 2024

- GSTR-5A for May 2024 to be filed by Non-Resident Service Providers of Online Database Access and Retrieval (OIDAR) Services.
- GSTR-3B for May 2024 to be filed by all registered taxpayers not under the QRMP Scheme.

25 June 2024

Payment of tax through GST PMT-06 by taxpayers under the QRMP Scheme for May 2024.

29 June 2024

- Information and documents to be furnished by an Indian concern under Section 285A.
- Due date for e-filing of a statement (in Form No. 3CEK) by an eligible investment fund under Section 9A in respect of its activities in FY 2023.

Compliance Calendar

Direct Tax
Indirect Tax

30 June 2024

- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in May 2024.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IB in May 2024.
- Due date for furnishing of challan cum statement in respect of tax deducted under Section 194M in May 2024.
- Due date for furnishing of challan cum statement in respect of tax deducted under Section 194S in May 2024.
- Return in respect of securities transaction tax for the FY 2023-24.
- Quarterly return of non deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending 31 March 2024.
- Statement to be furnished (in Form No. 64C) by AIF to unit holders in respect of income distributed during the previous year 2023-24.
- Report by an approved institution/public sector company under Section 35AC(4)/(5) for the year ending 31 March 2024.
- Due date for furnishing of statement of income distributed by business trust to its unit holders during the FY 2023-24. This statement is required to be furnished to the unit holders in Form No. 64B.
- Statement regarding preliminary expenses incurred to be furnished under proviso to clause (a) of sub-section (2) of Section 35D of the Act by the assessee (if due date of submission of return of income is 31 July 2024).
- Statement of income distributed by securitization trust to be provided to the investor under Section 115TCA of the Act during the FY 2023-24.
- Commodities Transaction Tax - Return of taxable commodities transactions for FY 2023-24.
- Statement of Specified Services or E-Commerce Supply or Services.
- Certificate to be issued by accountant under clause (23FF) of Section 10 of the Act (if due date of submission of return of income is 31 July 2024).
- Verification by an Accountant under sub-rule (3) of Rule 21AJAVerification (if due date of submission of return of income is 31 July 2024).

7 July 2024

- Securities Transaction Tax - Due date for deposit of tax collected for June 2024.
- Commodities Transaction Tax - Due date for deposit of tax collected for June 2024.
- Declaration under sub-section (1A) of Section 206C of the Act to be made by a buyer for obtaining goods without collection of tax for declarations received in June 2024.
- Collection and recovery of equalisation levy on specified services in June 2024.
- Collection and recovery of equalisation levy on e-commerce supply or services for the quarter ending 30 June 2024.
- Due date for deposit of Tax deducted/collected for June 2024. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income tax Challan.
- Due date for deposit of TDS for the period April 2024 to June 2024 when AO has permitted quarterly deposit of TDS under Section 192, 194A, 194D or 194H.

10 July 2024

- GSTR-7 for June 2024 to be filed by taxpayers liable to TDS.
- GSTR-8 for June 2024 to be filed by taxpayers liable to TCS.

11 July 2024

GSTR-1 for June 2024 by all registered taxpayers not under the QRMP Scheme.

13 July 2024

- GSTR-6 for June 2024 to be filed by ISDs.
- Uploading B2B invoices using IFF under the QRMP Scheme for June 2024 by taxpayers with aggregate turnover of up to INR 50 million.
- GSTR-5 for June 2024 to be filed by Non-Resident Foreign Taxpayers.

Easy Remittance Tool

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Form 15CA/CB Automation

- Review of tax position by experts
- Issuance of bulk certificates through Automated tool
- Repository - Access to entire set of documents
- Access to Detailed transaction wise reports
- Representation Support
- Generation 15CA bulk files & utility to generate Form A2

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