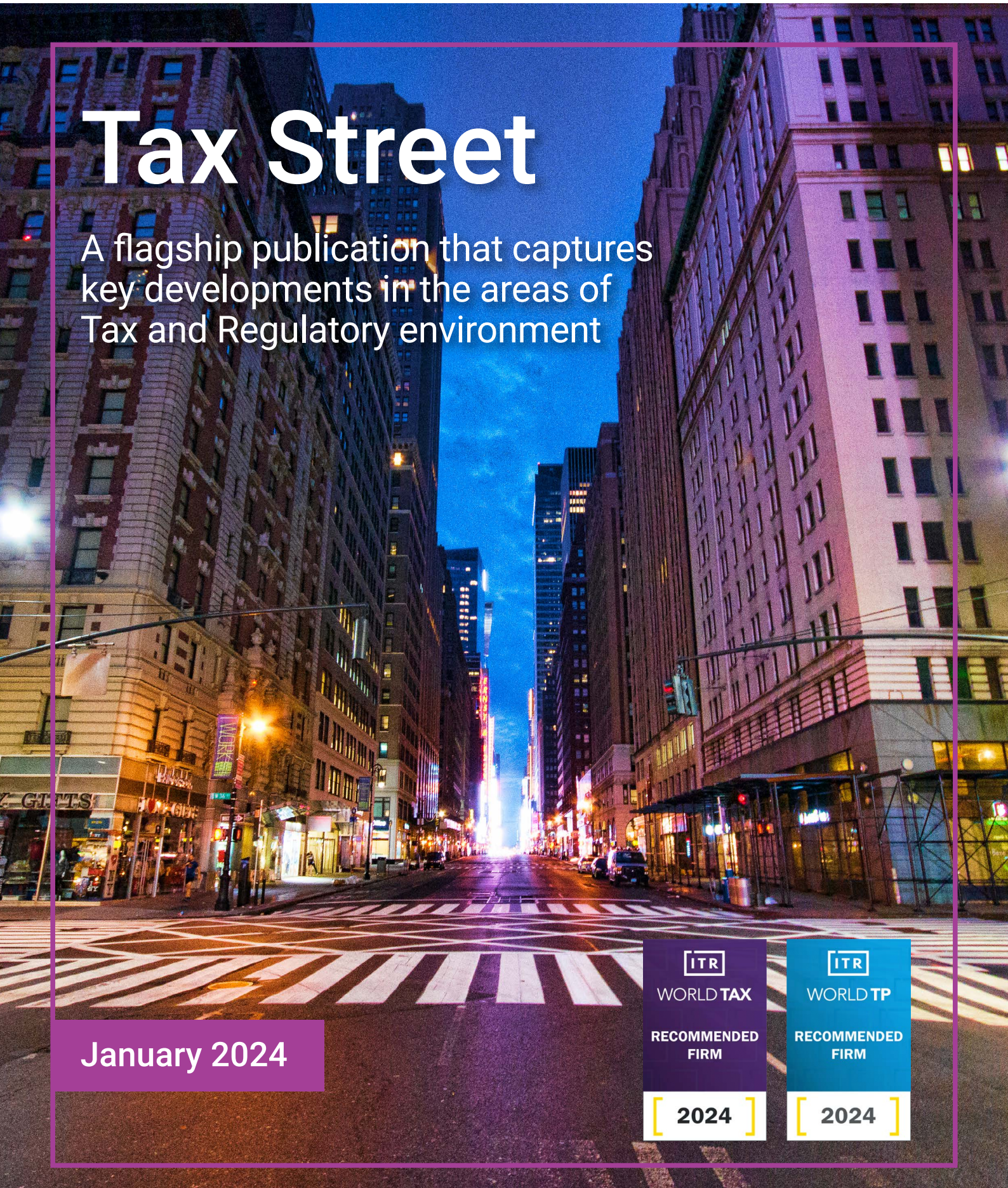
Tax Street

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



ITR WORLD TAX RECOMMENDED FIRM 2024

ITR WORLD TP RECOMMENDED FIRM 2024

January 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 January 2024.

- The **'Focus Point'** examines the aspects surrounding the taxation of gift vouchers.
- 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

Clearing the air on levy of GST on 'Gift Vouchers'

Vouchers have been a popular mode of gifting in this era, considering the ease of their purchase and redemption. In general parlance, a voucher means a denominated document that can be used to purchase either a defined product(s)/service(s) or any products/ services for a prescribed amount. While gifting has been made easy by introducing vouchers, their taxability under the GST law has been a bit confusing - whether GST should be levied on the purchase of vouchers per se or redemption thereof. Whether these vouchers can be treated as 'goods' or 'services' or 'actionable claims'? Can vouchers be treated as equivalent to money?

However, the recent judgment of Madras HC in the case of Kalyan Jewellers India Limited vs. Union of India & Ors.[1] seems to have answered the aforementioned questions, thereby alleviating any further controversy around the subject matter.

Before proceeding to analyze the said ruling, we may go through the provisions of the GST legislation relevant thereto.

Section 2(118) of the CGST Act defines a 'voucher' to mean "an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument."

As per Section 2(1), an 'actionable claim' shall have the same meaning as assigned to it in Section 3 of the Transfer of Property Act, 1882 (4 of 1882). In terms of the said provision, an actionable claim means "a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent."

Sections 12 and 13 of the CGST Act prescribe the Time of Supply of Goods and Services, respectively. As per sub-section (4) thereof, "In case of a supply of vouchers by a supplier, the time of supply shall be – (a) the date of issue of voucher, if the supply is identifiable at that point; or (b) the date of redemption of voucher, in all other cases."

Background of the case

- As part of the sales promotion strategy, Kalyan Jewellers India Limited sells gift cards/vouchers at their retail outlets as well as through online portals. Since these vouchers qualify as Prepaid Payment Instruments (PPI), they are subject to the regulatory framework outlined in the Payment and Settlement Act, 2007, and the Master Directions dated 11 October 2017 issued by the RBI.
- The Tamil Nadu Authority for Advance Ruling[2] held that the supply of gift vouchers constitutes a 'supply of goods' liable to GST at 12% in the case of paper-based gift vouchers classifiable under CTH 4911 or at 18% in the case of gift cards classifiable under CTH 8523. Consequently, the time of supply will be determined in terms of Section 12(4) of the CGST Act.
- Aggrieved thereby, the company approached the Appellate AAR[3], which held that the gift vouchers are neither goods nor services; however, at the same time, concluded that the same would be taxable at the time of their issuance in view of Section 12(4)(a) of the CGST Act.

1. W.P. No. 5130 of 2022 and W.M.P. Nos. 5227 & 5228 of 2022
2. 2020 (32) G. S. T. L. 689 (A. A. R. - GST - T. N.)
3. 2021 (50) G. S. T. L. 96 (App. A. A. R. - GST - T. N.)

- The company's rectification application had no bearing on the Appellate Authority for Advance Ruling's (AAAR) conclusion, and hence, they challenged the same before the Madras HC.
- HC upheld AAAR's view that 'voucher' per se is neither good nor service in view of Section 7 r/w Schedule III to the CGST Act and is rather an actionable claim as defined in Section 2(1) of the CGST Act r/w Section 3 of TOPA. Only the underlying transactions are taxable.
- However, it rejected the notion that 'time of supply' falls exclusively on the date on which the gift voucher is issued. Instead, it held that the tax liability is determined based on the inherent nature of the transaction. Therefore, the company will not be liable to pay tax at the time of issuance to its customers.
- Accordingly, the HC clarified the taxability as follows:
  - If the gift vouchers/cards are for a specified item of jewelry of specified value, tax is payable at the time of their issuance, as there is supply (i.e., transfer) within the meaning of the GST law. Therefore, tax is payable in view of Section 12(4)(a), i.e., at the time of issuance of such vouchers.
  - On the other hand, if there is no supply, i.e., no transfer within the meaning of Section 7, the time of supply is postponed to the actual time of redemption of the voucher when the customer presents the same at the counter. Resultantly, the company is liable to tax on the date of redemption under Section 12(4)(b).
  - Unless there is a clear identity of the "goods" or "services" and their value is ascertained on the date of issuance of the 'gift voucher,' the question of taxing a future supply of an unspecified good or service which is to take place on a future date is not contemplated under Section 12(4). This is the true purport of Section 12(4) of the GST laws.
- In view of the above, HC partly allowed the writ petition by modifying the AAAR order to the relevant extent.

While the aforesaid ruling provides the much-needed clarification on the treatment of gift vouchers/cards under the GST law, we may also look at the jurisprudence around this topic.

Rulings in other cases

- In the case of Sodexo SVC India (P) Ltd vs. State of Maharashtra[4], the Hon'ble SC ruled that meal vouchers are neither 'sold' by the assessee to its customers nor they could be traded/sold separately; hence, they were not 'goods' on which Octroi/LBT could be levied under Maharashtra Municipal Corporation Act, 1949. The Apex Court observed that the affiliates got money for goods and not the assessee, who only got service charges for services rendered to customers and the affiliates. The assessee was only a facilitator and medium between the affiliates and customers. The essential character of the entire transaction was to provide services by the assessee, which was achieved through vouchers.
- The Karnataka HC, in the case of Premier Sales Promotion Pvt. Ltd. vs. Union of India[5], while dealing with the taxability of gift and cashback vouchers, ruled that, in substance, the transaction between the assessee and his clients is the procurement of printed forms and their delivery. The printed forms are like currency/money. The value printed on the form can be transacted only at the time of redemption of the voucher and not at the time of delivery of vouchers to the assessee's clients. Therefore, the issuance of vouchers is similar to "pre-deposit" and not the supply of goods or services. Hence, vouchers are neither goods nor services and, therefore, cannot be taxed.

Our Comments

While the Madras HC's decision has provided clarity on the taxability of gift vouchers per se, it would be worthwhile if the GST Council and CBIC issued a comprehensive clarification on the treatment of such instruments. They should also throw light on the disclosures in GST returns (given that tax invoices against the underlying supply of goods and/or services would be issued in the future) as well as the implications in cases where customers do not redeem the gift vouchers/cards within the prescribed validity period.

4. 2016 (331) ELT 23 (SC)
5. 2023 (2) TMI 130 - KARNATAKA HIGH COURT

From the Judiciary

Direct Tax

Can profits be attributed to a fixed place PE in India, given the group has incurred losses in the relevant financial year?

Hyatt International-Southwest Asia Ltd
TS-812-HC-2023(DEL)

Facts

The assessee, Hyatt International Southwest Asia Ltd., is a UAE-based company engaged in the hotel business. The assessee filed a NIL return of income claiming that it did not have any Permanent Establishment (PE) as there was no branch or liaison office in India. Further, the presence of the assessee's employees in India did not exceed a period of nine months. Thus, there was no PE under Article 5(2) as well. Consequently, business income was not taxable as per Article 7.

The Assessing Officer (AO) held that the assessee has a PE in India as it is operating hotels belonging to the owners in each and every manner.

On appeal, the tribunal also agreed that the assessee has a PE in India, relying on the SC's judgment in the case of Formula One World Championship Limited. v. Commissioner of Income Tax, International Taxation-3, Delhi & Anr and directed for attribution.

Aggrieved by the findings of the Income Tax Appellate Tribunal (ITAT), the assessee appealed before the Delhi HC.

Held

HC observed that senior employees of the assessee visited India, and they exercised supervisory control. Furthermore, the assessee was not prevented from managing other hotels while stationed at the Hotel premises. Thus, HC held that the assessee has a Fixed Place PE from which it carried on its business.

HC noted that legal and exclusive control is unnecessary for a fixed-place PE. However, only sufficient control for carrying on business would be enough to construe it as available at the disposal of the assessee. HC noted that since the assessee was responsible for the entire management of the Hotel, including the deputation of employees without any recourse to Hyatt India or the owner, it was confirmed that the Hotel premises were at the assessee's disposal. Thus, upheld ITAT finding on assessee having a fixed place PE.

Furthermore, HC referred the question of the applicability of Article 7(1) of the DTAA to a larger bench, whether Article 7(1) is applicable to the assessee, considering the fact that it has incurred losses in the relevant financial years.

HC also observed that 'profits attributable to the assessee's PE in India are required to be determined on the footing that the PE is an independent taxable entity. It is, thus, possible that an assessee makes a net loss at an entity level on account of losses suffered in other jurisdictions, which is partly offset by profits arising from India. In these circumstances, if it is held that the assessee has a PE in India, prima facie the assessee would be liable to pay tax on the income attributable to its PE in India notwithstanding the losses suffered in other jurisdictions.'

Our Comments

It is notable that the Court emphasizes the necessity to calculate profits linked to the assessee's PE in India as if the PE were an autonomous taxable entity. This underscores the importance of treating the PE as a distinct entity for tax assessment purposes.

What are the implications for assessment orders issued without a Document Identification Number (DIN)?

Brandix Mauritius Holdings Ltd
TS-184-HC-2023(DEL)

The Hon'ble SC stayed the Delhi HC judgment and ITAT ruling in the case of Brandix Mauritius Holdings Limited, which enforced Revenue to follow CBDT Circular No. 19/2019 (the Circular), orally by observing that the absence of Document Identification Number (DIN) in assessment orders is at best 'irregularity' not 'illegality. SC also questioned, "Can assessment go without DIN? What was the position prior to DIN? Quashing the assessments is too severe a consequence, if the assessment goes without DIN, will there be a vacuum?

In this regard, SC issues notice and grants a stay on Delhi HC judgment and ITAT order until further orders.

Our Comments

This case highlights the critical importance of procedural adherence in tax assessments. As the Delhi HC and ITAT orders are stayed, taxpayers shall have to await further instructions on these cases before claiming that an order is non-est due to no mention of DIN.

Transfer Pricing

Benefits derived by the assessee should be considered in case of interest-free loans advanced to AE

Rubamim Limited
ITA Nos. 1738 to 1740/AHD/2019

Facts

In AY 2006-07, the assessee (engaged in the business of manufacturing cobalt, copper, and nickel) advanced an interest-free loan to its Associate Enterprises (AE) in the UAE. The TPO for AYs 2006-07 to 2008-09 made an upward adjustment by adopting the CUP method and calculating interest on such loans at LIBOR + 2%. Commissioner of Income-tax (Appeals) [CIT(A)] confirmed the upward adjustment. Aggrieved by the order, the assessee appealed to the ITAT. In its defense, the assessee had stated the following:

- The loan transaction is in the nature of commercial expediency to help the operation of the subsidiary in order to make assured supply of raw materials.
- By not charging any interest, the assessee was able to procure raw materials from the AE at a lower price which was more beneficial than the interest.
- The assessee had also obtained specific approval from the RBI to advance an interest-free loan.
- The assessee had entered into various other transactions with the same AE, which, along with the loan transaction, were inextricably interlinked and needed to be aggregated for benchmarking using the TNMM method since the cost of the loan transaction and the interest cost in such transaction/ purchases has already been inbuilt.
- The assessee also stated that the CUP method cannot be adopted since adequate comparables would not be available in the market for such transactions.

The TPO rejected the contention of the assessment, stating that while calculating the profit level indicator (PLI) using the TNMM method, the finance cost is usually considered non-operating in nature, and hence, the loan transaction cannot be aggregated with the rest of the transactions.

Held by the ITAT

By relying on the Organisation for Economic Co-operation and Development (OECD) Commentary and various judicial precedents, the ITAT enumerated instances wherein it is appropriate to aggregate international transactions for benchmarking purposes. The ITAT also highlighted that intentional set-offs could occur between AEs with respect to controlled transactions wherein when one enterprise provides benefit to another enterprise within the group that is balanced to some degree by different benefits received from that enterprise in return.

ITAT held that such a huge import of raw materials from the AE would not have been possible unless the assessee had incorporated a company in the UAE. Hence, the transaction of the interest-free loan cannot be viewed without considering the benefit derived by the assessee from its AE. Additionally, the interest cost appears negligible when analyzing the notional interest added by the TPO with the benefit derived by the assessee. Accordingly, the ITAT deleted the TP adjustment for all AYs.

Our Comments

Interest-free loans extended to related parties necessitate thorough examination to validate adherence to economic principles, substantiated by comprehensive documentation highlighting the accrued benefits.

CBDT Instruction No. 03/2016 mandatory for AO; ITAT upholds order passed by PCIT under Section 263

Tokai Rika Minda India Private Limited
ITA No. 781/Bang/2023

Facts

In relation to the order passed by the AO for AY 2018-19, the PCIT (Principal Commissioner of Income Tax) passed an order under Section 263 to set aside the AO's order as erroneous and prejudicial to the Revenue's interests as the AO had not followed the CBDT Instruction No. 03/2016 for making a reference to the TPO. However, the statutory time limit to pass the TP order had expired when the revisionary order was passed. The assesse appealed against the revisionary order, stating that the order was passed only because AO did not refer the matter within the prescribed time limit for completion of the TP Order under Section 92CA. Thus, powers of Section 263 were invoked only to extend the statutory time limit given to the AO/TPO in completing the assessment. The assessee presented the following arguments backed by various judicial precedents:

- This was not a case of non-reference made by the AO to the TPO but a case of invalid reference made to the TPO beyond the statutory time limit, which rendered the assessment order non-est in the eyes of law, which cannot be revised under Section 263.
- The revisionary order was passed only to cover up the negligence of the AO in performing his duties within the statutory time limit, which is not within the scope of Section 263, making it an illegal exercise of power.

The Departmental Representative stated that the AO is bound by the CBDT Instruction to refer to the TPO to make TP adjustment; hence, there was no error in invoking the provisions of Section 263.

Held by the ITAT

- ITAT noted that the instructions issued by the CBDT were mandatory, and by not making a timely reference to the TPO, the AO had breached the mandatory instructions. This view was also upheld by the SC in its ruling in the case of S.G. Asia Holdings India Pvt. Ltd. Hence, the ITAT upheld PCIT's invoking of jurisdiction under Section 263 and setting aside of the AO's order for the specific purpose of referring the matter to the TPO.

Our Comments

In cases where reference has erroneously not been made up until the deadline to pass the TP Order and where such an error is prejudicial to the interests of the Revenue, PCIT under Section 263 has the power to set aside the AO order and direct conducting of a fresh assessment so that a reference can be made to the TPO.

Indirect Tax

Whether interest is payable vis-à-vis delayed GSTR-3B filing even though GST liability is deposited in the Electronic Cash Ledger (ECL) within the due date?

Eicher Motors Limited vs. The Superintendent of GST & Central Excise and Anr.
TS-19-HC(MAD)-2024-GST

Facts

- Two writ petitions were filed before the Madras HC challenging a recovery notice and an order confirming the demand of interest.
- The petitioner had an accumulated CENVAT Credit to be transitioned into the GST regime. However, owing to technical glitches, the TRAN-1 form was filed belatedly.
- Owing to this delay, the petitioner could not file the monthly GSTR-3B returns for the period July 2017 to December 2017 within the prescribed due dates. However, the tax dues were fully paid through GST PMT -06 challan within the prescribed due date as per GST law.
- The petitioner submitted that the taxes were duly paid within the due date of filing the returns, and accordingly, interest could not be demanded as a result of the delayed return filing.
- On the other hand, the Revenue contended that the taxes paid through challan are only 'deposits' and the government receives the money only when the return is filed. Thus, according to the Revenue, interest was liable to be demanded for delayed filing of return, although the taxes were credited in ECL within the due dates.

Ruling

- HC noted that crediting of funds to the government account will invariably take place no later than the last date for submitting monthly returns, as outlined in Section 39(7) of the CGST Act.
- As per the Court, it is immaterial whether the GSTR-3B return is filed within the due date or not for remittance of tax to the government account.
- HC further held that mere default on the part of the petitioner in filing their GSTR-3B cannot postpone the utilization of the tax amount so deposited by the government.
- It observed, "no interpretation can be made as held in the judgment of the Hon'ble Division Bench of Jharkhand HC rendered in RSB Transmission case (referred supra) stating that no payment of tax can be made until the filing of GSTR-3B, which is against the provisions of Section 39(1) and 39(7) of the Act and thus, the said finding would render disastrous consequences in utilization of GST collections by the exchequers."
- The Court observed that the 'prescribed date' mentioned in Section 50(1) of the CGST Act refers to the last date for payment of GST in terms of the provisions of Section 39(7).
- Consequently, HC held that as long as the GST collected by a registered person is credited to the account of the government not later than the last date for filing the monthly returns, to that extent, the tax liability of such registered person will be discharged from the date when the amount was credited to the account of the government.
- Furthermore, if there is any default in payment of GST even subsequent to the due date for filing the monthly returns, i.e., on or before the 20th of every succeeding month, for the said delayed period alone, a registered person is liable to pay interest in terms of Section 50(1) of the Act.
- Resultantly, HC refused to follow the law laid down by Jharkhand HC in RSB Transmission (India) Ltd vs Union of India [MANU/JH/1260] and by Telangana HC in Megha Engineering and Infrastructures Limited vs. CCT [MANU/TL/41/2019], as they were not in line with the provisions of the Act and Rules made thereunder.

Our Comments

While the present judgment would help taxpayers facing similar interest recovery proceedings to fortify their defense, it may be prudent for the Apex Court to provide finality to this issue considering the contradictory judgments of the High Courts.

The Jharkhand HC in RSB Transmission and Telangana HC in Megha Engineering has ruled against the taxpayers. In contrast, Gujarat HC in Vishnu Aroma Pouching Pvt Ltd vs. Union of India [2020 (38) GSTL 289 (Guj)] has taken a view similar to that of Madras HC.

Quotes and Coverage

Budget 2024: Save up to Rs 18000 a year in electricity bills via Pradhan Mantri Suryodaya Yojana rooftop solar power scheme; who is eligible
2 February 2024
Economic Times | Sneha Pai
https://bit.ly/3w8GvxW

Income Tax Slabs 2024-25 Budget 2024 Updates: How will Budget 2024 impact you? Taxpayers must know
2 February 2024
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1 February 2024
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Income Tax Budget 2024 Live: Nexdigm's Sanjay Chhabria says expectations of rationalisation of GST rates seem to be a big miss
1 February 2024
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Investment On Some Income Of IFSC Exempted, Tax Relaxation For Startups A Bold Move: Experts
1 February 2024
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Tax Talk

Indian Developments

Direct Tax

CBDT issues guidelines for Section 194-O

Circular No. 20 of 2023
F. NO. 370142/43/2023-TPL
dated 28 December 2023

- Finance Act 2020 inserted new Section 194-O, wherein it is mandatory for an e-commerce operator to deduct TDS at the rate of 1% of the gross amount of sale of goods/provision of service.
- However, the board received several representations for clarifications on some practical issues in the applicability of Section 194-O after the introduction of Section. Considering this, CBDT has issued guidelines via Circular No. 20 of 2023, clarifying treatment that should be adopted for various practical difficulties in applying Section 194-O.
- It provides clarification regarding various issues such as who shall deduct TDS where there are multiple e-commerce operators involved in a transaction, the calculation of gross amount for the purposes of this Section, Treatment of GST and various states taxes as well as levies when calculating Gross Amount for the purpose of Section, adjustments in case of purchase returns, discounts, etc. while calculating gross amount.

Indirect Tax

Customs

CBIC rationalizes BCD rates for cellular mobile phone parts and sub-parts

Notification No. 9/2024-Customs
dated 30 January 2024 r/w
Notification No. 57/2017-Customs
dated 30 June 2017

CBIC has prescribed a 10% Basic Customs Duty (BCD) for specified goods used in the manufacture of cellular mobile phones. These goods include inter alia battery cover; front, middle, and back covers; main lens; SIM socket; GSM antenna/antenna of any technology; other mechanical items of plastic and metals. On the other hand, inputs or parts used to manufacture aforesaid goods shall attract Nil BCD. The aforesaid rates shall be applicable subject to the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

CBIC extends the validity of import duty exemptions till September 2024

Notification Nos. 6/2024-Customs
and 7/2024-Customs, both
dated 29 January 2024

CBIC has extended the validity of customs duty exemptions lapsing on 31 March 2024 up to 30 September 2024 under 33 Notifications. The Board has also extended the BCD and IGST exemption under Notification No. 50/2017-Customs for specified imports till 30 September.

Foreign Trade Policy

Import policy restrictions applicable only to 'Laptops,' 'Tablets,' 'All-in-one Personal Computers,' 'Ultra Small Form Factor Computers,' and 'Servers,' clarifies DGFT

Policy Circular No. 09/2023-24
dated 12 January 2024 r/w DGFT
Notification No. 23/2023 dated
3 August 2023, Notification No.
26/2023 dated 4 August 2023,
Notification No. 38/2023 dated 19
October 2023 and in continuation
to Policy Circular No. 6/2023-24
dated 19 October 2023

The DGFT has clarified that the import restriction is applicable to only Laptops, Tablets, All-in-one Personal Computers, Ultra Small Form Factor Computers and Servers falling under HSN Code 8471. Accordingly, imports shall be allowed against a valid authorization only for the aforesaid five item categories. The said restriction does not apply to any other goods, such as Desktop Computers, etc., under tariff head 8471.

DGFT prohibits the import of 'Screws' covered under HSN Code 7318

Notification No. 55/2023, dated 3 January 2024

The DGFT has prohibited the import of Screws under ITC (HS) Codes 73181110, 73181190, 73181200, 73181300, 73181400, 73181500, and 73181900. However, the import shall be free if the CIF value is INR 129 or above per kg.

DGFT eases the import policy restriction for 'Silver' covered under HSN Code 7106

Notification No. 57/2023, dated 15 January 2024

The import of Semi-Manufactured Silver Paste, Sheets, Plates, Strips, Tubes, Electrodes, Wires, and Silver Brazing Alloys (in any form) by Electrical, Electronics, and Engineering industries, including Glass and Solar industries as input for their manufacturing process on "Actual User" basis shall be Free. Similarly, import of given items for R&D purposes by government or Govt. Recognized Institutions shall also be Free. On the other hand, imports for any other purposes shall continue to be through specified agencies (i.e., nominated RBI and DGFT agencies) as per the earlier provisions.

Quotes and Coverage

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1 February 2024
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Union Budget 2024: Will The Finance Minister Slash The GST On The Gaming Industry?
21 January 2024
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Spectre of multi-authority, repetitive and multi-directional proceedings haunting GST-payers
12 February 2024
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Financial Express | Sneha Pai
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Enhanced disclosure requirements during voluntary liquidation
7 February 2024
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Key Highlights of GST Notifications and Clarification Circulars
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Direct Listing of Equity Shares on International Exchange (IFSC - GIFT CITY)
29 January 2024
https://bit.ly/3ULm2tc

Tax Talk

Global Developments

Direct Tax

OECD releases statistics from the International Compliance Assurance Programme (ICAP)

Excerpts from oecd.org dated 29 January 2024

The OECD released the first aggregated statistics from the Forum on Tax Administration (FTA) International Compliance Assurance Programme (ICAP) for a multilateral risk assessment of an MNE group's key international tax risks. These statistics cover all cases completed by October 2023, including the two ICAP pilots, and provide an overview of the jurisdictions and topics covered by the completed risk assessments, the time taken to complete a risk assessment, and aggregated data on risk assessment outcomes. They also consider the relationship between ICAP and other routes to tax certainty, such as Advance Pricing Arrangements (APAs) and Mutual Agreement Procedures (MAPs), including how these tools complement each other and can be used together by an MNE group to manage its tax risk and increase tax certainty.

Key takeaways from the statistics include:

- 20 ICAP cases were completed by October 2023, with more currently in progress.
- The average time taken from the start of an ICAP process to the issuing of risk assessment outcomes to an MNE was 61 weeks, which is higher than the maximum target timeframe of 52 weeks described in the ICAP handbook, in part due to the impact of COVID-19 on the second pilot.
- For 40% of MNE groups, all the main covered transfer pricing risk areas were considered low risk by all tax administrations that included them in the scope of the risk assessment.
- The risk area that received the highest proportion of low-risk outcomes was PE (considered low risk in 95% of instances where the topic was included in the scope of a tax administration's risk assessment), followed by tangible property (90%), intragroup services (88%), financing (76%) and intangible property (75%).

MNEs interested in applying for ICAP, including MNEs that have already participated in the program, should reach out to the tax administration in which their group is headquartered at the earliest convenience. For MNEs headquartered in a jurisdiction that does not currently participate in ICAP, such MNEs can contact the OECD to express their interest in participating.

Applications can be accepted at one of the two annual deadlines – 31 March and 30 September.

Transfer Pricing

United States: Issues guidance on implicit support for intra-group financing transaction

Recently, the Internal Revenue Service (IRS) Office of Chief Counsel issued an internal guidance in the form of a Generic Legal Advice Memorandum (GLAM) that provides insights into its position on the effect of group memberships on intra-group financing transactions under Section 482.

Section 482 provides for consideration of "all relevant factors" while determining the arm's length rate of interest, which includes "the credit standing of the borrower." The said regulation does not explicitly state that the borrower's credit standing should include implicit support when pricing intercompany debt.

However, in the GLAM, the IRS has outlined its position by clarifying that the factors contributing to the borrower's credit rating include the borrower's role, level of integration within the controlled group, and implicit support from affiliates. This approach is consistent with the Transfer Pricing Guidelines of the OECD.

The IRS posits by an example that even though the member from whom implicit support is expected is the lending entity in an intra-group arrangement, the borrowing entity should retain the benefit of a lower interest rate as per the realistic alternative principle[6] and passive association rules[7] contained in the regulations.

The guidance sheds light on expected positions the IRS might take in future audits on intra-group financing arrangements. Taxpayers should evaluate such arrangements to determine whether the borrower is essential to the group's financial performance such that a party lender would take into account the inherent implicit support available to the borrowing entity.

The said guidance issued is a clarification of the existing law and is not a new law.

Italy: Revised timelines for maintaining Transfer Pricing Documentation

The Revenue Agency, vide Legislative Decree no. 1/2024, amended the due date to file income tax returns, pursuant to which taxpayers will have to file returns within nine months of the financial year's end rather than 11 months, which existed earlier. Thus, taxpayers with calendar year end will have to file a return for 2023 electronically by 30 September 2024.

This would have a direct implication on transfer pricing compliance wherein the Transfer Pricing Documentation must be finalized, digitally signed, and timestamped before the income tax return is filed to qualify for penalty protections given under the law.

Taxpayers should review and reorganize their annual schedules in light of reduced timelines for compliance.

Poland: Issues revised Safe Harbour rates for intra-group loans

The Polish tax authority specified the following margins for Safe Harbor for loan, credit, or bond (debt) transactions between related parties in 2024:

- A maximum of 3.1 % for the borrower; and
- At least 2.2 % for the lender,

Although currently, the notice allows the usage of synthetic (USD / GBP) LIBOR for contracts entered on or before 1 January 2022, however, the same is planned to be discontinued at the end of September 2024 (for USD 3M Libor) and March 2024 (for GBP 3M Libor).

After the said discontinuation, the reference rate of SOFR and SONIA should be used.

Indirect Tax

Bulgarian VAT amendments effective 1 January 2024

Excerpts from various sources

The Bulgarian Parliament accepted changes to the VAT Act to align their legislation with the European legal acts. The key highlights of the amendments are captured below:

- Destroying or scrapping of goods that are duly proven to have lost all usefulness in the taxable person's economic activities will not give rise to an adjustment obligation.
- Reduced VAT rate of 9% on restaurant and catering services extended from 31 December 2023 to 31 December 2024.
- Reduced VAT rate of 9% for tourist services and use of sports facilities extended from 31 December 2023 to 30 June 2024.
- The zero VAT rate for bread and flour extended from 31 December 2023 to 30 June 2024.
- An increase in the threshold for mandatory VAT registration to BGN 166,000 from 1 January 2025.

Poland postpones mandatory E-invoicing system

Excerpts from www.gov.pl

The Polish Ministry of Finance has announced that the National e-Invoicing System (KSeF), which was to be mandatory from 1 July 2024, will be implemented at a later date. The Ministry will commission an external IT audit of the KSeF and set a new deadline for implementing the system.

6. This principle concludes that a borrowing entity would reject a financing at higher rate from related party when it could obtain the same from third party lender who would consider such "implicit support" of the group while lending.
7. These rules state that no compensation is owed for any benefit arising solely from passive association with a controlled group. Thus, the benefit of lower interest rate should be retained by the borrower absent legally binding explicit support.

VAT reduction is applicable till June 2024 in Vietnam

Excerpts from various sources

The Vietnamese Government has issued guidance (Decree 94/2023) on the 2% VAT reduction applicable from 1 January 2024 through 30 June 2024. The reduction applies to groups of goods and services currently subject to the tax rate of 10% (with some exceptions). It also applies to business establishments that adopt the VAT credit method and business establishments (including business households and business individuals) that declare and pay VAT at a deemed rate (%) of revenue.

Upcoming Events

11th Edition Future of Finance Summit & Awards 2024
27 February 2024
UBS Forums | Lokesh Gupta and Nishit Parekh

Events and Webinars

Decoding the Fiscal Blueprint: Unravelling the Fine Print of the Union Budget - Budget session - Panel Discussion
5 February 2024
BBG | Sneha Pai and Sanjay Chhabria

Budget session
3 February 2024
CXO Genie | Sneha Pai and Sanjay Chhabria

Compliance Calendar

Direct Tax
Indirect Tax

7 February 2024

- Due date for deposit of tax deducted/collected for January 2023. 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.

10 February 2024

- GSTR-7 for January 2024 to be filed by taxpayers liable to Tax Deducted at Source (TDS).
- GSTR-8 for January 2024 to be filed by taxpayers liable to Tax Collected at Source (TCS).

11 February 2024

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

13 February 2024

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

14 February 2024

- Due date for issue of TDS Certificate for tax deducted under Section 194-IA in December 2023.
- Due date for issue of TDS Certificate for tax deducted under Section 194-IB in December 2023.
- Due date for issue of TDS Certificate for tax deducted under Section 194M in December 2023.
- Due date for issue of TDS Certificate for tax deducted under Section 194S (by specified person) in December 2023.

15 February 2024

- Due date for furnishing of Form 24G by an office of the government where TDS/TCS for January 2024 has been paid without the production of a challan.
- Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending 31 December 2023.

20 February 2024

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

25 February 2024

- Payment of tax through GST PMT-06 by taxpayers under QRMP scheme for January 2024.

Compliance Calendar

Direct Tax
Indirect Tax

1 March 2024

- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in January 2024.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IB in January 2024.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194M in January 2024.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194S (by specified person) in January 2024.

7 March 2024

- Due date for deposit of Tax deducted/collected for February 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.

10 March 2024

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

11 March 2024

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

13 March 2024

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

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- Access to Detailed transaction wise reports
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- Generation 15CA bulk files & utility to generate Form A2

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