

Tax Street

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

June 2024

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Introduction

Tax Street

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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 June 2024.

- The **'Focus Point'** covers a few aspects surrounding the FTS on access to online database.
- 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

An overview of FTS on access to online database

The characterization of income as Fees for Technical Services (FTS) has always been a matter under litigation on the global forum, with no systematic guidance available to date for its determination. However, the courts have had plenty of time to share additional inputs and further directions (*like in the case of Kotak Securities and Skycell Communications*) to help better analyze the characterization of income. However, there is no single thumb rule but a host of conditions based on various facts and circumstances for determining the characteristics of income being in the nature of FTS.

Meaning of FTS under the Income-tax Act

Section 9 of the Income-tax Act, 1961 (the Act) defines FTS under Clause (vii) as including managerial, technical, and consultancy services. The definition of FTS is wide enough to cover multiple services that fall within the meaning of managerial, technical or consultancy services.

Scope restricted under the make available clause

Under certain tax treaties signed with countries like the UK, USA, Singapore, etc, the scope of nature of income being fees for technical services is

restricted to only cases where the services make available technical knowledge, experience, skill, know-how or processes, which enables the person acquiring the services to apply the technology contained therein.

This means that the service provider, by way of providing the services, also makes the inherent technicalities of the services available to the recipient's disposal and that the service recipient can now independently use or apply the inherent technical knowledge or know-how. Thus, such services where the expertise is not passed along with the services are not covered by the meaning of FTS.

The scope and meaning of making available inherent technical knowledge and know-how are explained in detail in the protocol of the India-USA tax treaty.

FTS on access to the database

Recently the Hon'ble Supreme Court dismissed a special leave petition against an order passed by the Hon'ble Karnataka High Court¹, holding that the service of granting access to database is not in the nature of FTS.

The assessee was engaged in the business of providing graphic design solutions for advertising and marketing communications. It made payments to

US companies for marketing services, and the scope of work was to generate customer leads using/subscribing to customer databases, market research, analysis, and online research data. The Assessing Officer (AO) held that services of a US company were utilized in concluding contracts, which could not have been done without sharing technical knowledge, know-how, processes or experience, hence, payment was taxable in India as FTS.

The Hon'ble Tribunal allowed the assessee's appeal by holding that the scope of work was to generate customer leads using/subscribing to customer database, market research, analysis, and online research data and by this, the service provider had not made available any technical knowledge, experience, know-how, process to develop and transfer technical plan or technical design. Karnataka High Court confirmed the Tribunal's ruling.

On similar grounds, the Hon'ble Mumbai Tribunal² held that payment towards subscription fees for access to specified online databases could not be considered as FTS as the same did not involve any human intervention.

1. CIT v. Ad2pro Media Solutions (P) Ltd [2023] 148 taxmann.com 226 (Karnataka)

2. Elsevier Information Systems GmbH v. DCIT (IT) Circle 2(2)(1), Mumbai [2019] 106 taxmann.com 401 (Mumbai - Trib.)

Similarly, the Hon'ble Delhi Tribunal³ held that subscription fees for access to a database of books, journals, and material in the field of science, technology, life, health and physical and social sciences subject areas were not in the nature of FTS.

In view of the above, the current judicial precedent appears that services of access to the database are not in the nature of FTS provided the services do not make available any technical knowledge, experience, know-how, process to develop and transfer technical plan or technical design and the services do not involve any human intervention. Furthermore, it appears that the Apex Court also holds the same view, as it has dismissed the SLP against the Karnataka High Court's order. Some further judicial precedents from the High Courts as well as the Apex Court in due course of time should help add further perspective to this issue.

Articles

Are You a Shareholder? Here's What You Must Know About Deemed Dividends

14 June 2024

Good Returns | Maulik Doshi
<https://bit.ly/3S6L8Rv>

India-EFTA Trade & Economic Agreement: A Win-Win Deal

12 June 2024

ET CFO | Sanjay Chhabria
<https://lnkd.in/dwbEPXxs>

Navigating the New Trade Agreements: A Strategic Guide for Exporters

7 June 2024

<https://lnkd.in/dGJSAsVm>

Quotes and Coverage

Industry expects correction of inverted duty structure on leather, textiles in Budget 2024-25

4 July 2024

Moneycontrol | Sanjay Chhabria
<https://bit.ly/3W3UxtX>

MCA to roll out more high security statutory filing forms in June

1 July 2024

LiveMint | Subodh Dandawate
<https://bit.ly/3S8sKaS>

Tax Experts React to 53rd GST Council Meeting Decisions

24 June 2024

Taxsutra | Sanjay Chhabria
<https://bit.ly/3zFv9Dv>

3. Elsevier Ltd v. ACIT [2023] 152 taxmann.com 376 (Delhi - Trib.)



From the Judiciary

Direct Tax

Subscription-based product sales under reseller agreement are business or royalty income?

Gartner Ireland Ltd
TS-399-ITAT-2024 (MUM)

Facts

The assessee, a company incorporated in the Republic of Ireland, is engaged in the business of the sale of subscription-based products and related services, including publications, reports and periodicals that highlight industry developments, review new products and technologies that provide independent research and insight on all aspect of a company's business (IT, Finance, HR, Marketing, Sales, Logistics, etc).

The assessee introduced its subsidiary, Gartner India Research and Advisory Services Pvt. (Garter India) as an intermediary for subscribing to the GIL products. The assessee entered into a 'reseller agreement' with Garter India for selling the 'GIL' product to Indian customers. The assessee's income from these subscription-based products comprised of (i) resale by Gartner India to its customers in India on a principal-to-principal basis under a reseller agreement and (ii) sale to Gartner India for its internal use in exchange for a research access fee under a research access agreement.

During the assessment proceedings, the AO and Dispute Resolution Panel classified these payments as subscription fees within the ambit of Royalties under the Act and taxed at 10% as per Article 12 of the India-Ireland Double Taxation Avoidance Agreement (DTAA), contending that GIL product involved 'the right to use or access copyrighted material', thereby constituting royalty income.

Held

The Mumbai Income Tax Appellate Tribunal (ITAT) held that GIL charged a one-time quarterly fee to Gartner India for products, allowing Gartner to resell these products multiple times. This implies that Gartner purchased both the product and the right to copy and resell it, effectively making the transaction a sale of copyright. Although the invoice did not explicitly state a license fee, it is essentially a fee for the use of copyright.

The assessee failed to correlate resale invoices from Gartner India with its own sales invoices, thus failing to prove a simple trading transaction. The invoices specified only a lump sum quarterly fee without detailing the number of subscriptions sold. Consequently, the sale of the digital products to Gartner, including the rights to copy and resell, constitutes royalty income. Regarding the taxability of the research access

fee, the ITAT held that the requisite information and documentation are not available to substantiate whether Gartner India has exploited any copyright in the digital and the matter was remanded to AO.

The appeal filed by the assessee was partly allowed.

Our Comments

It is pertinent to analyze whether subscription-based products or software sold is a mere transfer of 'copyrights' a transfer of or 'copyrighted material' to draw a conclusion regarding applicable withholding tax liability.

Whether connectivity services, being ancillary to inter-connect services, can be treated as FTS under the Income-tax Act?

Huawei International Co. Ltd.
TS-433-ITAT-2024 (DEL)

Facts

The Huawei International Co. Ltd (Huawei Int.) is a Hong Kong-based company engaged in the business of distributing telecommunication products. The assessee received reimbursement of connectivity charges from its Indian Associated Enterprise (AE), Huawei Telecommunication (India)

Company Pvt. Ltd. (Huawei India), for the provision of connectivity services for international communication, without deducting Tax Deducted at Source (TDS).

During the assessment proceedings, the AO classified these payments as FTS under the Act, viewing that the connectivity services provided by the assessee shall fall within the ambit of 'Consultancy' or 'Managerial' services and would be liable to tax as FTS under Section 9(i)(vii).

Held

The Delhi ITAT held that no tax is deductible at source under Section 195 of the Act on reimbursement received for rendering connectivity services.

ITAT observed that the assessee has only paid for connectivity services and the services are merely ancillary to enabling the provision of inter-connect services and part of the processing of the product. ITAT contended that the receipt cannot be treated as 'Technical,' 'Consultancy' or 'Managerial' in nature. In this regard, ITAT ruled in favor of Huawei Int. by dismissing Revenue's appeal.

Our Comments

It is essential to understand the underlying nature of services for which reimbursement is provided. The mere provision of ancillary services to the business functions may not qualify as FTS.

Transfer Pricing

WDV in the books of AE cannot be treated as ALP using the CUP method

Sarens Heavy Lift India Private Limited
ITA No.256 / Del / 2019

Facts of the case

The taxpayer is engaged in the business of hiring and leasing heavy cranes and also engaged in retail operation and providing of related services. During FY 2009-10, the taxpayer purchased nine used cranes from its AE worth INR 343.2 million, which were benchmarked using the Transactional Net Margin Method (TNMM) by comparing its operating profit margins with that of comparable companies.

The Transfer Pricing Officer (TPO), during the course of the assessment proceeding, disregarded the application of the TNMM method used by the taxpayer for determining the Arm's Length Price (ALP) and applied the internal Comparable Uncontrolled Price (CUP) method considering the Written Down Value (WDV) of the cranes provided in the books of the AE and made an upward adjustment of INR 184.6 million. Pursuant to the above, the taxpayer filed their objections before the learned Dispute Resolution Panel (Ld. DRP).

Directions of Ld. DRP

On perusing the details furnished by the taxpayer, Ld. DRP observed that the WDV of the cranes in the AE's books cannot be considered as ALP as it was not derived from the transactions between enterprises other than AEs. Placing reliance on the submission made by the taxpayer, the Ld. DRP held that ALP should be based on a valuation done by a chartered engineer or, accepted by customs authorities or done by the Discounted Cash Flow (DCF) method. The AO and the TPO ignored the valuation done by the independent chartered engineer (at INR 341.5 million), the valuation as per

the customs authorities (at INR 344.6 million) and the FMV derived by using the DCF method (at INR 439.2 million).

Ld. DRP, placing reliance on the ruling of Tecumseh Products India Private Limited⁴ directed the TPO to accept the valuation report provided by the taxpayer and delete the addition made on account of ALP of cranes.

Pursuant to the above, the Revenue filed an appeal before the Hon'ble ITAT wherein the Hon'ble ITAT upheld the directions issued by the DRP⁵.

Aggrieved by the order of the Hon'ble ITAT, the Revenue filed an Appeal before the Hon'ble HC.

Held by the Hon'ble HC

The Hon'ble HC upheld the actions of the Ld. DRP and Hon'ble ITAT. Placing reliance on Rule 10B of the Income Tax Rules, 1962 (Rules), the Hon'ble HC stated that identification of ALP from the point of view of uncontrolled price method shall be referable to comparable uncontrolled transactions (transaction between enterprises other than AE). Since the equipment has been purchased by the taxpayer from the AE, reference to WDV would have thus fallen foul of this fundamental percept.

In addition to the above, the Hon'ble HC also held that the Revenue authorities (including TPO during the course of the assessment proceedings) failed to bring forth any other comparable or any other methodology for examination. Accordingly, the Hon'ble HC upheld the actions of the Hon'ble ITAT.

Our Comments

The said ruling outlines the need for the taxpayer to maintain robust documentation and relevant evidence as a pre-requisite to validate the determination of ALP for international transactions relating to the purchase of assets from the AE. It becomes pivotal to have a valuation report from an independent valuer in place, which determines the asset's independent

4. TS-154-ITAT-2014(HYD)-TP

5. TS-294-ITAT-2018(DEL)-TP

value to justify the transaction being at ALP. The ruling also highlights the basic principles of applying the CUP method, wherein the premise of the application is to compare transactions between unrelated parties.

Quotes and Coverage

Deadline for opting GST Composition Scheme for FY 2024-25 is March 31, 2024; file CMP-02 form if eligible

24 June 2024

Economic Times | Sanjay Chhabria

<https://bit.ly/3zFv9Dv>

Small debts that dominate the bulk of bankruptcy settlements

15 June 2024

LiveMint | Subodh Dandawate

<https://bit.ly/4d0mf1A>

Curb on unfair GST demand recovery proceedings: GST official needs prior approval from higher authority to act within 3 months of demand

14 June 2024

Economic Times | Sanjay Chhabria

<https://bit.ly/4cWFbYr>

A new excise law to refine 80 years old law

6 June 2024

LiveMint | Sanjay Chhabria

<https://bit.ly/3y6tWo9>

Indirect Tax

Whether customs duty exemption under the Merchandise Exports from India Scheme (MEIS)/Service Exports from India Scheme (SEIS) duty credit scrips would extend to Social Welfare Surcharge (SWS) liability as well?

Gemini Edibles and Fats India Pvt. Ltd. vs Union of India & Ors.
TS-219-HC-2024(MAD)-CUST

Facts

- The appellant is engaged in manufacturing and marketing edible oils and fats, for which it imports goods, viz. 'RBD Palm Oil Edible grade in bulk' attracting customs duties.
- During the period February 2018 to July 2019, the appellant utilized the MEIS and SEIS scrips, which were procured from various exporters, to offset the customs duties applicable to these imports.
- However, a dispute arose as to whether the SWS, payable at 10% of the aggregate of customs duties, could be debited from the scrips in terms of Notification No. 24/2015-Cus (MEIS) and Notification No. 25/2015-Cus (SEIS).
- The Single Judge Bench of Madras HC *inter alia* held that the exemption granted vide said Notifications is only in respect of payment of customs duty in cash. The scrips have money value and the act of debiting, in effect, amounts to levy and collection of duty from the importer.
- However, SWS being an independent levy imposed and collected in terms of Section 110 of the Finance Act, 2018, the recovery thereof could not be done by debiting the scrips and that the appellant was liable to discharge the same in cash or through some other mode.
- Aggrieved by the said verdict, the appellant approached the Division bench.

Ruling

- Applying the doctrine of pith and substance, the HC delved into the true nature of the exemption granted under subject Notifications.
- It observed that a Notification, merely by virtue of having been issued under Section 25(1) of the Customs Act, cannot be understood as granting exemption from the levy of customs duty. Instead, one must enquire and find the substance of the Notification.
- The subject Notifications could not be understood as granting exemption from the levy of SWS, in as much as they only refer to Section 25(1) and bear no reference to Section 110 of the Finance Act, 2018.
- The effect of debiting the duty scrips is not administrative, but is a mode of payment of duty and thus, the appellant's argument that there is neither levy nor collection of customs duty was untenable.
- The HC further observed, the fact that the duty does not form part of the Consolidated Fund of India does not have any bearing on determining the scope and nature of an exemption Notification, nor would have relevance in determining as to whether there was any levy/ collection of duty.
- In this context, HC relied on its decisions in **TANFAC Industries Ltd vs. Asst. Commissioner of Customs, Cuddalore [2009 (240) ELT 341]** and **Commissioner of Central Excise and another vs. SPIC Heavy Chemicals Division and others [2013 SCC Online Mad 4021]** wherein it was held that goods cleared under duty credit scrips cannot be treated as exempted goods but only as duty paid goods.
- In view of the above, HC upheld the order of Single Judge bench and dismissed the writ appeals.



M&A Tax Update

Our Comments

The ruling once again highlights the importance of 'substance' and the 'intention' behind an exemption Notification along with the conditions attached thereto.

The Court has emphasized that when a specific duty is exempted, other duties/cesses/surcharges imposed by the legislation for a different purpose cannot be considered to be included therein.

It is worth noting that this ruling could result in a substantial working capital impact in as much as the Customs authorities could initiate recoveries where importers had utilized the scrips for payment of SWS.

ITAT Nagpur: Valuation not adopted as per Rule 11UA, matter cannot be remanded back for re-determination

Citation: *Vedsidha Products Pvt Ltd. v. CIT 1(3) [2024]*
TS-437-ITAT-2024 (NAG)

Facts of the case

The assessee, a private company, is engaged in manufacturing concrete bricks. The assessee had allotted 3,47,980 equity shares of face value of INR 100 each on 1 October 2012. Out of these, 3,12,980 shares were issued at par to promoters and the remaining 35,000 shares were issued to private investors at a premium of INR 450. During the assessment, the assessee submitted a valuation report dated 1 April 2012, computing the FMV of shares at 23,530 each as per Net Asset Value (NAV) method under Rule 11UA. While arriving at the FMV of shares, the assessee had a land parcel in MIDC, Nagpur, which was valued at a rate higher than MIDC. However, the AO rejected the valuation and worked out a negative value (INR -38.13) per share as a result of incurring continuous losses by the company. Accordingly, the AO made an addition of INR 1,57,50,000 under the head Income from Other Sources under Section 56(2)(viib) of the Act with respect to the premium received on shares allotted.

Aggrieved by the order of AO, the assessee filed an appeal before the Commissioner of IT (Appeals) [CIT(A)], who held that the assessee, while arriving at value as per the NAV method, had only replaced the historical cost of land with the value adopted by the registered valuer. Furthermore, even if MIDC rates had to be applied, the value per share would be INR 1193.8 per share, which is still more than INR 550 per share issued by the assessee. Accordingly, the AO erred in rejecting the valuation report and the addition was deleted.

Decision by Nagpur ITAT

Aggrieved, the Revenue appealed the case to Nagpur ITAT, which held as follows:

- The assessee's Ld. Authorized Representative (AR) failed to produce any evidence or comparable instance to substantiate the FMV of land adopted in the valuation report.
- The ITAT was unable to reconcile the fact as to why no premium was taken from the promoters of the company when shares to three other shareholders were at a premium of INR 450, which was issued to both in the same financial year.
- The valuation report was obtained on 1 April 2024, much before the date of allotment, i.e., 1 October 2024, which was a departure from the requirement of FMV to be considered on the date of issue of shares as per Section 56(2)(viib) of the Act. Accordingly, the valuation could not be considered as per Rule 11UA. Hence, the valuation could neither be remanded back to AO nor referred to the valuation officer. Hence, no cognizance of the valuation report could be taken.
- The FMV of shares had to be determined by the merchant banker or accountant, who the company does not appoint as an auditor under Section 44AB, which was not met in the present case.
- Accordingly, the AO correctly calculated the net worth of the company to be negative because of incurring continuous losses.

Our Comments

It was held that where the valuation is not carried out as per the requirements of Rule 11UA, the matter cannot be remanded back to the AO for re-determination.

Tax Talk

Indian Developments

Indirect Tax

Customs

CBIC clarifies the procedure for inter-unit transfer of goods under MOOWR

Instruction No. 16/2024 dated 25 June 2024

The Central Board of Indirect Taxes and Customs (CBIC) has provided below clarification on the transfer of resultant goods from one Manufacturing and Other Operations in Warehouse Regulations (MOOWR) unit to another:

- MOOWR, in effect, provides that the deferred customs duty on the warehoused goods becomes payable only when the resultant goods are cleared for home consumption by filing the Ex-Bond Bill of Entry.
- Such inter-unit transfer is permitted, subject to the following conditions:
 - A one-time lock is to be affixed at the time of dispatch and the licensee should verify the intactness of such lock.
 - Reconciliation of the quantity received in the transfer form (a complete description of the resultant goods and the warehoused goods contained therein must be properly mentioned).

- The form must be duly endorsed by the licensee or warehouse keeper of the dispatching warehouse and the receiving warehouse.
- The transfer must be duly intimated to the Bond Officer.
- The Triple Duty Bond of the transferee/receiver will be debited and that of the transferor/supplier will be re-credited.

TRU clarifies the applicability of concessional 10% BCD on 'display assembly of cellular mobile phones'

Circular No. 06/2024-Customs dated 7 June 2024

In partial modification of Circular No. 14/2022-Customs dated 18 August 2022, the Tax Research Unit (TRU) has clarified as follows:

- Attachment of frame/support structure, receiver mesh, speaker net, foam, sticker, protective film and/or conductive cloth on the display assembly does not alter the essential characteristic of the display in any manner and accordingly, the assembly would continue to be treated as 'Display Assembly of cellular mobile phone.' Similarly,

the where SIM socket, SIM tray, antenna pin, side keys like power key, slider switch and volume button are imported as an integrated part (already fabricated, embedded, fitted or attached to the assembly) with the Display Assembly of cellular mobile phone, the Basic Customs Duty (BCD) rate of 10% shall be applied on the whole integrated assembly.

- However, if these items/components are imported individually, they will attract the BCD rate as applicable.
- On the other hand, if the following items are fabricated, embedded, fitted or attached to the display assembly, the benefit of concessional BCD would not be available. Instead, such assembly is to be treated as a general part of cellular mobile phone attracting BCD rate as applicable: (a) Printed Circuit Board Assembly (PCBA) of mobile phone, (b) main lens for feature phones, (c) housing of mobile phone, (d) speakers, (e) charger/adaptor, (f) camera module, (g) keypad of feature phone, etc.

Government extends provisional Anti-Dumping Duty on 'Emulsion PVC Resins' by six months

Notification No. 09/2024-Customs (ADD) dated 13 June 2024

The government has decided to extend the imposition of provisional anti-dumping duty at varied rates on the import of 'Poly Vinyl Chloride Paste Resin' (also known as 'Emulsion PVC Resin') from China PR, Korea RP, Malaysia, Taiwan, Thailand and Norway. The levy will be effective for six months and be payable in Indian currency. However, the following products are excluded – (a) PUC with a K value below 60K, (b) PVC Blending Resin, (c) Co-polymers of PVC Paste Resin, (d) Battery separator resins, and (e) the brand name "Biovyn" produced by Innovyn Europe Ltd.

Foreign Trade Policy (FTP)

DGFT relaxes "Bill of Export" requirement to substantiate EO discharge under Advance Authorization

Policy Circular No. 04/2024 dated 3 June 2024

In response to the compliance hardships faced by the exporters, the DGFT has decided to relax the requirement of submission of 'Bill of Export' in case of supplies made before 1 July 2017 to SEZ unit/developer/co-developer under Advance Authorization/DFIA. Accordingly, for the purpose of fulfillment of export obligation (EO), the exporter may submit the following alternative corroborative evidence:

- ARE-1 (showing the Advance Authorization No./DFIA File No.) duly attested by the jurisdictional Central Excise/GST Authorities of Authorization-holder/exporter.

- Evidence of receipt of supplies by the SEZ recipient.
- Evidence of payment made by the SEZ unit to the exporter as per Para 4.21 of FTP.

Government restricts the import of specific gold products, except under India-UAE CEPA TRQ

Notification No. 17/2024-25 dated 11 June 2024

The government has restricted the import of specified gold products of ITC (HS) Code 71131912, 71131913, 71131914, 71131915 and 71131960 with immediate effect. However, the same would be permitted under a valid India-UAE Comprehensive Economic Partnership Agreement (CEPA) Tariff Rate Quota (TRQ) without restricted import authorization.

DGFT eases compliance for obtaining EODC in case of deemed exports under Advance Authorizations

Public Notice No. 09/2024 dated 6 June 2024

The Directorate General of Foreign Trade (DGFT) has revised Para 2(b) of the 'Guidelines for Applicants' under ANF-4F of HBP 2023 to simplify the procedure and reduce the compliance burden for applying for Export Obligation Discharge Certificate (EODC) against deemed exports under Advance Authorizations.

Accordingly, the applicants can now submit:

- Copies of system-generated GST e-invoices and corresponding e-way bills (copies of invoices or statements of invoices duly certified by GST authorities of supplier/recipient where system-generated documents cannot be provided).

- Copy of the shipping bill with the name of the domestic supplier as the intermediate supplier endorsed on it, along with the file no./authorization no. of the ultimate exporter and intermediate supplier (in case of intermediate supplies to the port directly for export).
- e-BRCs.
- Statement of supplies/exports and imports made and actual consumption of inputs, duly certified by an independent Chartered Accountant.

Alerts

Gist of Circulars issued by CBIC on 11 July 2024

13 July 2024

https://lnkd.in/dX_S_xTt

Key Highlights of GST Notification and Clarification Circulars in June 2024

3 July 2024

<https://bit.ly/3S3U365>

Gist of Circulars issued by CBIC on 26 June 2024

28 June 2024

<https://bit.ly/3zGzoP4>

Highlights of the 53rd GST Council Meeting

25 June 2024

<https://bit.ly/4f3XRhm>

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>



Tax Talk

Global Developments

Transfer Pricing

Australia introduces public country-by-country reporting - legislation⁶

Since the introduction of Action 13 of the original Base Erosion and Profit Shifting (BEPS) project, the world's largest multinationals have been required to provide Country-by-Country (CbC) tax information to tax administrations in numerous jurisdictions around the world. It is intended to provide tax authorities with more information about the geographic footprints of global businesses. Importantly, the data, much of which may be commercially sensitive, is subject to tax authorities' obligations to protect the confidentiality of taxpayer information.

However, with the intent of increasing tax transparency for multinational enterprises, on 5 June 2024, legislation pertaining to public disclosures of CbC tax information was introduced in the Australian Parliament.

Effective period

The legislation would be effective for reporting periods on or after 1 July 2024. For December year-end groups, the 31 December 2025 year will be the first year for which public CbC Reporting (CbCR) is required in Australia.

Applicability

The rules would apply to groups with a presence in Australia (an Australian resident entity or an Australian permanent establishment), global consolidated income of more than AUD 1 billion in the prior year, and AUD 10 million or more of aggregated Australian-sourced income in the current year. The legislation also allows the Commissioner to exempt certain classes of entities and to provide exemptions for specific entities. It is pertinent to note that the legislation seems to indicate that certain types of government entities might be exempted, it is expected that other exemptions would be limited.

Reporting requirements

Enhancing the disclosure requirements, in-scope groups will generally be required to report the below-mentioned information to the Australian Commissioner of Taxation (Commissioner) within 12 months of the end of the reporting period, which would eventually be published on an Australian government website.

- names of each entity within the CbCR group;
- description of the CbCR group's tax approach; and

- quantitative tax information for the income year for the relevant jurisdictions wherein the CbC group operates.

Several other pieces of financial and other information will be required to be disclosed publicly for each entity listed, which would include details relating to the number of employees, revenue from overseas related parties and unrelated parties, profit/loss before tax for the relevant period, income tax paid and accrued, etc.

The CbCR parent may, at its discretion, either publish disaggregated data for specific jurisdictions and aggregated data for balance jurisdictions (as a minimum compliance standard) or publish disaggregated data for each jurisdiction of the group.

Failure by the CbCR parent to publish information on time or publish information to the correct 'material' error on time may attract an administrative penalty.

The reporting requirements are specifically laid down for CbCR parents. It would be worthwhile to see how the Australian Taxation Office (ATO) would administer the penalties for late filing and/or non-compliance with CbCR when the reporting parent is an entity domiciled outside of Australia. Currently, there is no guidance on this in the recently introduced legislation.

6. <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr7199%22>

However, there is a strong likelihood that such non-compliance penalties would be applied to the local Australian entity when the CbCR parent is not domiciled in Australia.

Public CbCR requirements mark a giant leap toward fostering transparency and ethical tax practices. It would be pivotal for multinational groups to proactively involve key stakeholders locally and internationally for the collation of such robust information prior to public disclosure.

Indirect Tax

Columbia increases e-invoicing audits and inspections for non-compliance

Excerpts from various sources

In 2024, the Colombian Tax Authority (DIAN) intensified audits and inspections focused on e-invoicing compliance. Failure to adhere to technical requirements for issuing or delivering e-invoices can lead to penalizing the taxpayers with the closure of business premises for a period of three days.

Alternatively, instead of closure, taxpayers can opt to pay a fine equivalent to 5% of their operational income of the previous month. DIAN plans to further increase such audits and inspections throughout the year.

Poland delays E-invoicing mandate

Excerpts from various sources

Initially planned for July 2024, the Polish e-invoicing system (KSeF) has been postponed due to problems in the system's code, functionality and efficiency. The new implementation schedule for E-invoicing has been released as below:

- Mandatory from 1 February 2026 for entrepreneurs whose sales value (including the tax amount) exceeded PLN 200 million in 2025.
- For the rest of the entrepreneurs, it will be mandatory from 1 April 2026.

Romania expands E-invoicing mandate to include B2C transactions

Excerpts from various sources

The Romanian Ministry of Finance issued Urgent Ordinance 69/2024 on 21 June 2024 to include an e-invoicing mandate for business-to-consumer (B2C) transactions.

From January 2025, businesses must mandatorily use the RO e-invoicing system for B2C transactions. However, voluntary adoption began on 1 July 2024. The Ordinance further emphasizes the timely submission of invoices to the RO e-invoicing system within five days of issuance.

Exceptions apply to certain entities with implementation deadlines extended to 1 July 2025.

AG Capeta clarifies VAT treatment of EV charging through cards/apps

Excerpts from various sources

In April 2024, the Advocate General (AG) Capeta of the Court of Justice of the European Union (CJEU) issued her opinion in a case involving the VAT treatment of the supply of electricity between Charging Point Operator (CPO), the e-Mobility Service Provider (e-MSP) and the electric vehicle (EV) driver.

The AG's opinion suggests that the provision of a card and an authentication app, which allow users to charge their EVs, should be considered a supply of goods under the commissionaire model. According to her, the provision of a card or app can be interpreted as an implicit instruction to e-MSP to purchase a specific quantity of electricity, and the supply of electricity in the transaction between the CPO and e-MSP is not different from that in the transaction between e-MSP and the EV driver. Accordingly, both supplies are subject to VAT.

It may be pertinent to note that CJEU had already ruled in 2023 that the charging of a vehicle must be considered a supply of goods consisting of the supply of electricity.

Compliance Calendar

- Direct Tax
- Indirect Tax

7 July 2024

- Due date for the 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 when tax is paid without the 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.
- 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.
- 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 June 2024.
- Collection and recovery of equalization levy on specified services in June 2024.
- Collection and recovery of equalization levy on e-commerce supply or services for the quarter ending 30 June 2024.

15 July 2024

- Quarterly statement to be furnished by a specified fund in respect of a non-resident referred to in Rule 114AAB in respect of the quarter ending 30 June 2024.
- Quarterly statement to be furnished by a unit of an International Financial Services Centre, as referred to in sub-section (1A) of Section 80LA, in respect of remittances, made for the quarter of April to June of FY 2024-25.

20 July 2024

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

22 July 2024

- GSTR-3B for the quarter of April 2024 to June 2024 to be filed by taxpayers under the QRMP Scheme and having principal place of business in Category 1 States.

24 July 2024

- GSTR-3B for the quarter of April 2024 to June 2024 to be filed by taxpayers under the QRMP Scheme and having principal place of business in Category 2 States.

25 July 2024

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

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 Tax Collection at Source (TCS).

11 July 2024

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

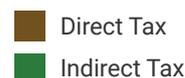
13 July 2024

- GSTR-6 for June 2024 to be filed by Input Service Distributors (ISDs).
- Uploading B2B invoices using Invoice Furnishing Facility (IFF) under 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.

15 July 2024

- Due date for furnishing of Form 24G by an office of the government where TDS/TCS for June 2024.
- Due date for issue of TDS Certificate for tax deducted under Section 194-IA in April 2024.
- Due date for issue of TDS Certificate for tax deducted under Section 194-IB in April 2024.
- Due date for issue of TDS Certificate for tax deducted under Section 194M in April 2024.
- Due date for issue of TDS Certificate for tax deducted under Section 194S in April 2024.
- Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending June 2024).
- Quarterly statement of TCS deposited for the quarter ending 30 June 2024.
- Upload the declarations received from recipients in Form No. 15G/15H during the quarter ending June 2024.
- 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 June 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 June 2024.

Compliance Calendar



30 July 2024

- Quarterly TCS certificate in respect of tax collected by any person for the quarter ending 30 June 2024.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in June 2024.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IB in June 2024.
- Due date for furnishing of challan cum statement in respect of tax deducted under Section 194M in June 2024.
- Due date for furnishing of challan cum statement in respect of tax deducted under Section 194S in June 2024.

31 July 2024

- Application for the exercise of option under sub-section (5) of Section 115BAD of the Act (if due date of submission of return of income is 31 July 2024).
- Statement of Exempt income under Clause (4D) of Section 10 of the Act (if due date of submission of return of income is 31 July 2024).
- Statement of income of a Specified fund eligible for concessional taxation under Section 115AD of the Income-tax Act, 1961 (if due date of submission of return of income is 31 July 2024).
- Annual Statement of Exempt Income under sub-rule (2) of Rule 21AJA and taxable income under sub-rule (2) of Rule 21AJAA (if due date of submission of return of income is 31 July 2024).
- Statement of exempt income under Clause (23FF) of Section 10 of the Act (if due date of submission of return of income is 31 July 2024).
- Form for opting for taxation of income by way of Royalty in respect of Patent (if due date of submission of return of income is 31 July 2024).
- Income attributable to assets located in India under Section 9 of the Act (if due date of submission of return of income is 31 July 2024).
- Particulars to be furnished under Clause (b) of sub-section (1B) of Section 10A of the Act (if due date of submission of return of income is 31 July 2024).
- Details of amount attributed to capital asset remaining with the specified entity (if due date of submission of return of income is 31 July 2024).
- Declaration to be filed by the assessee claiming deduction under Section 80GG (if due date of submission of return of income is 31 July 2024).

31 July 2024

- Quarterly statement of TDS deposited for the quarter ending 30 June 2024.
- Quarterly statement of tax deposited in relation to transfer of virtual digital asset under Section 194S to be furnished by an exchange for the quarter ending 30 June 2024.
- Return of income for the AY 2024-25 for all assessee other than (a) corporate assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) working partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of Section 5A applies to such spouse or (d) an assessee who is required to furnish a report under Section 92E.
- Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending 30 June 2024.
- Intimation by Pension Fund of investment under Clause (23FE) of Section 10 of the Act for the quarter ending 30 June 2024.
- Intimation by Sovereign Wealth Fund of investment under Clause (23FE) of Section 10 of the Act, for the quarter ending 30 June 2024.
- Statement by scientific research association, university, college or other association or Indian scientific research company as required by Rules 5D, 5E and 5F (if due date of submission of return of income is 31 July 2024).
- Payment of Self Assessment Tax (if due date of submission of return of income is 31 July 2024).
- Certificate under sub-section (3) of Section 80QQB for authors of certain books in receipt of royalty income, etc. (if due date of submission of return of income is 31 July 2024).
- Certificate under sub-section (2) of Section 80RRB for Patentees in receipt of royalty income, etc. (if due date of submission of return of income is 31 July 2024).
- Report under Section 80LA(3) of the Act (if due date of submission of return of income is 31 July 2024).
- Taxation of income from retirement benefit account maintained in a notified country (if due date of submission of return of income is 31 July 2024).
- Certificate of foreign inward remittance (if due date of submission of return of income is 31 July 2024).
- Certificate of the medical authority for certifying a person with a disability, severe disability, autism, cerebral palsy and multiple disabilities for purposes of Section 80DD and Section 80U (if due date of submission of return of income is 31 July 2024).

Compliance Calendar

- Direct Tax
- Indirect Tax

31 July 2024

- Form for furnishing particulars of income under Section 192(2A) for claiming relief under Section 89 (if due date of submission of return of income is 31 July 2024).
- Authorization for claiming deduction in respect of any payment made to any financial institution located in a notified jurisdictional area. (if due date of submission of return of income is 31 July 2024).
- Statement of eligible investment received
- Application for exercise of option under Clause (i) of sub-section (6) of Section 115BAC or withdrawal of option under the proviso to sub-section (6) of Section 115BAC of the Act.
- Certificate of accountant in respect of compliance to the provisions of Clause (23FE) of Section 10 of the Act by the notified Pension Fund.

10 August 2024

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

13 August 2024

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

7 August 2024

- Securities Transaction Tax - Due date for deposit of tax collected for July 2024.
- Commodities Transaction Tax - Due date for deposit of tax collected for July 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 July 2024.
- Collection and recovery of equalization levy on specified services in July 2024.
- Due date for deposit of Tax deducted/collected for July 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 when tax is paid without the production of an Income tax Challan.

11 August 2024

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

Category 1 states - Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.

Category 2 states - Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.

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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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Unveiling Union Budget 2024

As FM Nirmala Sitharaman announces the Union Budget 2024, stay tuned for updates, insights and a detailed analysis from our experts. Join us as we decode the tax announcements, explore sectoral facets and evaluate industry aspects to determine a comprehensive impact on India's economy.

Date	Organizer	Time	Events	Location	Speakers
24 July 2024	The American Chamber of Commerce in India (AMCHAM India)	8:00 AM	In person	Mumbai	Maulik Doshi and Sanjay Chhabria
24 July 2024	Indo German Chamber of Commerce (IGCC)	8:00 AM	In person	Pune	Sneha Pai and Aditya Nadkarni
24 July 2024	Indo French Chamber of Commerce and Industry (IFCCI)	3:00 PM	Webinar	Virtual	Nishit Parikh and Sanjay Chhabria
25 July 2024	Services Export Promotion Council (SEPC)	11:00 AM	Webinar	Virtual	Sneha Pai and Hiren Vora
26 July 2024	CXO Genie	11:00 AM	Webinar	Virtual	Nishit Parikh and Hiren Vora

RSVP: events@nexdigm.com

About Nexdigm

Nexdigm is an employee-owned, privately held, independent global organization that helps companies across geographies meet the needs of a dynamic business environment. Our focus on problem-solving, supported by our multifunctional expertise enables us to provide customized solutions for our clients.

We provide integrated, digitally driven solutions encompassing Business and Professional Services that help companies navigate challenges across all stages of their life-cycle. Through our direct operations in the USA, Poland, UAE, and India, we serve a diverse range of clients, spanning multinationals, listed companies, privately-owned companies, and family-owned businesses from over 50 countries.

Our multidisciplinary teams serve a wide range of industries, with a specific focus on healthcare, food processing, and banking and financial services. Over the last decade, we have built and leveraged capabilities across key global markets to provide transnational support to numerous clients.

From inception, our founders have propagated a culture that values professional standards and personalized service. An emphasis on collaboration and ethical conduct drives us to serve our clients with integrity while delivering high quality, innovative results. We act as partners to our clients, and take a proactive stance in understanding their needs and constraints, to provide integrated solutions. Quality at Nexdigm is of utmost importance, and we are ISO/IEC 27001 certified for information security and ISO 9001 certified for quality management.

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Nexdigm resonates with our plunge into a new paradigm of business; it is our commitment to *Think Next*.

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