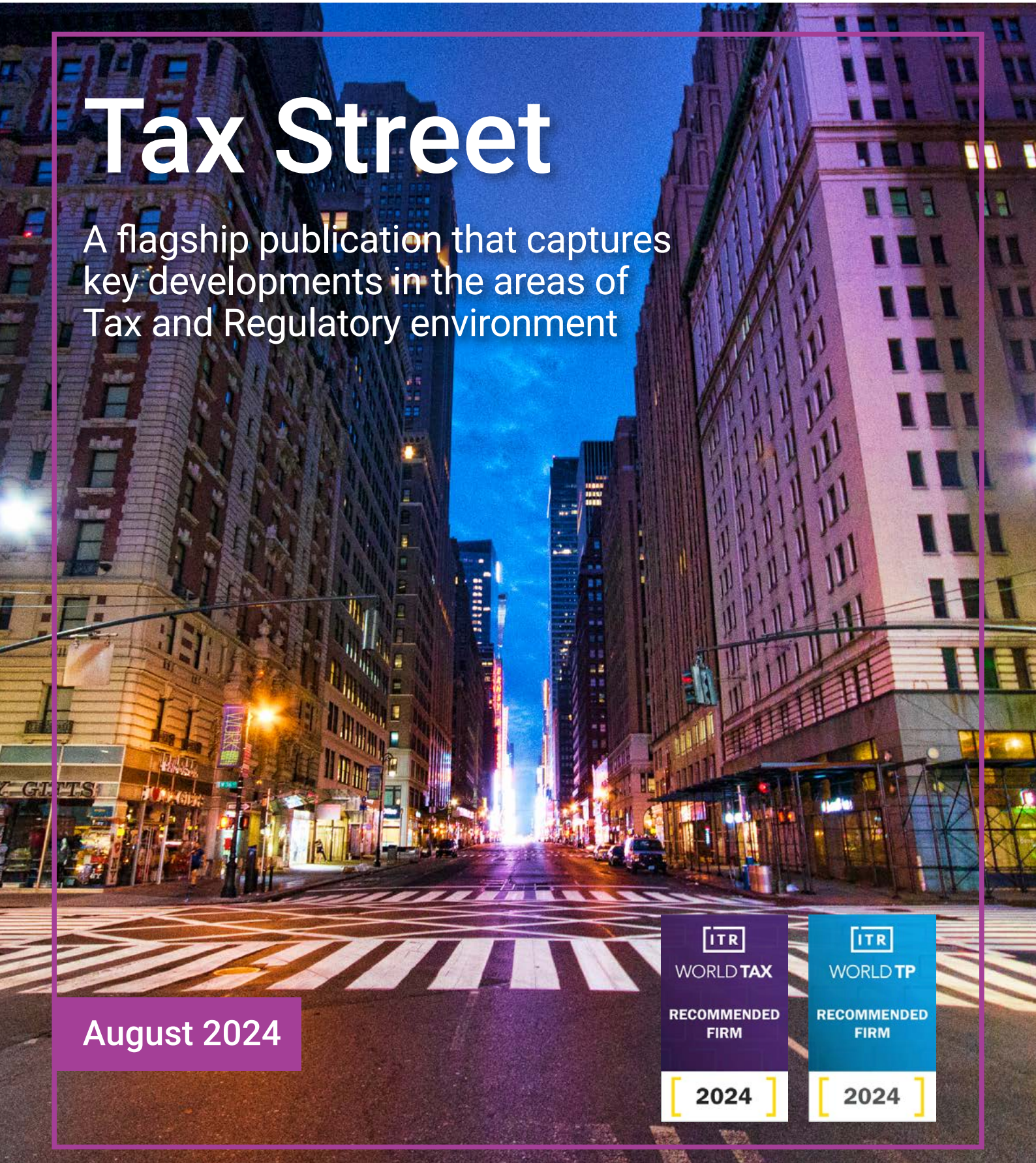
Tax Street

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

August 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 August 2024.

- The **'Focus Point'** covers the key pointers to consider when filing income tax returns.
- 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

Overview of crucial aspects when filing income tax returns

The assessees are required to file their income tax returns, offering their income earned during the year to tax. The provisions of Income-tax Act (ITA),1961 state that income earned in the previous financial year (PY) is liable to be taxed in the assessment year. The Income Tax Return (ITR) is to be filed within the due date prescribed under Section 139(1) of the ITA. The due date of filing the return of income is approaching. The process of filing an ITR can be a bit complex and challenging, and should be carried out with accuracy.

Below is a list of things that taxpayers should consider while filing their ITR:

Sunset clause not extended – Section 115BAB

Companies engaged in manufacturing are eligible to opt for the lower rate of tax under Section 115BAB provided they have commenced manufacturing by 31 March 2024. This option has to be exercised prior to filing the first return of the company. A company that has opted for the provision in previous years but has failed to commence manufacturing will be ineligible for the lower rate. Such a company may exercise the option to avail the lower rate under Section 115BAA.

Disallowance of delayed payments made to MSEs

This provision is effective from AY 2024-25. The Finance Act, 2023 inserted Section 43B(h), which stipulates that any sum owed to Micro and Small enterprises will be allowed as a deduction only if the payment has been made within the due date stipulated by the Micro, Small, and Medium Enterprises Development (MSMED) Act, 2006. Alternatively, the payment will be allowed in the year in which the payment has been actually made. Furthermore, the extended timeline up to the due date of ITR filing, provided under section 43B of the ITA, is not applicable for delayed MSE payments.

As per Section 15 of MSMED Act, a buyer is liable to make payment to the supplier within a period of 15 days in absence of an agreed period or a maximum period of 45 days if the period has been agreed upon.

Employee contribution to funds - Section 36(1)(va)

An employer is mandated to contribute funds collected from an employee for PF or other welfare funds within prescribed due dates as per relevant laws. Any delayed contribution is not allowed as a deduction.

The Hon'ble SC in a recent decision[1] has ruled in favor of Revenue and held that the employees contribution paid beyond due dates shall not be allowed as a deduction as per the provisions of Section 36(1)(va) of the ITA and the provisions of Section 43B of the ITA do not apply.

Prior to this ruling by the SC, deductibility of employee's contribution to provident fund collected by the employer and deposited beyond the due date specified in the relevant statutes but before the filing of the return of income, had been a matter of litigation resulting from contrary decisions of various High Courts.

Given the contrary rulings on the issue, an explanation was introduced to Section 36(1)(va), clarifying that the due date for depositing the contribution collected by the employer shall not be or never has been the due date mentioned in Section 43B of the ITA. The amendment is effective from 1 April 2021.

1. Checkmate Services Private Ltd. Vs CIT – I [2022] 143 taxmann.com 178 (SC)[12-10-2022]

Relaxation from Section 40(a)(i)/(ia) - Non Deduction of TDS (Form 26A)

If tax is required to be deducted at source of any payment and such payment is made without deducting tax at source, then such expense or proportionate expense is not allowed as a deduction while computing taxable income. The expense is allowed as a deduction in the year in which tax is paid to the Government. This often leads to a cashflow issue for the company, as the payment to the recipient has already been made and now to claim a deduction of the expense, the tax would either need to be borne by the payer or a separate recovery of tax payable would be required from the recipient.

A provison in the said section was inserted a few years ago, suggesting that if the recipient has paid the tax, it shall be deemed that the tax has been paid on the date the recipient has furnished his return of income; and deduction of the expense shall be allowed to the payer in the year in which the recipient files the return. The payer is required to obtain and file Form 26A duly signed by a CA.

Some relevant tax deductions

Deduction for generation of additional employment (Section 80JJAA):

An employer who is subject to tax audit under Section 44AB of the ITA is allowed additional deduction of cost of salaries from taxable income for creating new jobs. If an employer has increased the number of people employed with him, he can be eligible for a deduction of the additional salary cost over a period of three years, i.e., 30% per year. The deduction is subject to the fulfillment of conditions specified in the section, including that the salary cost of each eligible new employee should not exceed INR 25,000 per month. Additionally, a CA report in Form 10DA is to be filed one month before the due date under Section 139(1).

Deduction under Section 80M:

A domestic company distributing dividends can claim a deduction under this section if its gross total income includes dividends from other domestic or foreign companies, or business trusts. The deductible amount is the lower of the dividends received or the dividends distributed by the company by the due date. Due date here is defined to mean the date one month prior to the income return filing due date under Section 139(1).

Form 71 to Allow TDS Credit in Respect of Income Disclosed in ITR Filed in Earlier Years

TDS credit can be claimed by any assessee only in the year in which the corresponding income is offered to tax. It has been observed that assessees face difficulty in claiming the TDS credit against the income offered to tax due to the difference in timing of TDS and income reporting.

- **Where the TDS has been deducted in Year 1, but the income is offered to tax in Year 2** - In such cases, the assessee can simply carry forward the TDS credit to the subsequent year by making relevant disclosures in the ITR.
- **Where the income has been offered in Year 1 but the TDS is deducted in the subsequent year, i.e., in Year 2.**- This causes a TDS mismatch, as the income has already been taxed on an accrual basis in Year 1, but the tax is deducted in the subsequent year.

A procedure to address the second issue has now been provided in Section 155(20) of the ITA. The assessees need to file Form 71[2] within two years from the end of the FY in which the tax was withheld. The Assessing Officer (AO) shall thereafter rectify the return of income under Section 154 of the ITA.

Preparation and filing of an ITR is a critical assignment wherein the assessees should carefully review and disclose all the relevant aspects of their income. Also, one should carefully consider various updates pertaining to the law while computing taxable income, to ensure that the ITR is processed correctly without any defaults or defects.

Upcoming Webinars

VIVAD SE VISHWAS 2.0: Tax Disputes, Simplified
29 September 2024
Nexdigm | Sneha Pai
https://bit.ly/4epMiQx

Webinars

Unravelling Intricacies of filing IT & TP Returns in India
13 August 2024
Taxsutra | Sneha Pai, Abhay Saboo
https://youtu.be/jDVYFBInFYE

Determining Tax bill under UAE Corporate Tax law
29 August 2024
Nexdigm | Lokesh Gupta, Nishit Parikh
https://youtu.be/7yf7dYNxOIo

2. Rule 134 of the Income Tax Rules

From the Judiciary

Direct Tax

Can a financial institution which is wholly owned by the Government of China (36.45% shares held by the Government of China) take benefit of the Article 11(3) of the India-China Double Taxation Avoidance Agreement (DTAA)?

Tata Teleservices Ltd TS-603-ITAT-2024(DEL)

Facts

Tata Teleservices Ltd. (Assessee) did not deduct tax at source on interest payments made to China Development Bank (CDB) by taking benefits of Article 11(3) of the DTAA. However, tax officers opposed it and made two arguments:

Ownership Dispute: The Revenue contends that, according to the financial statements, only 36.45% of CDB's shares were held by the Ministry of Finance, China and the remaining shares held by other entities such as Central Huijin Investment Ltd., Buttonwood Investment Holding Company, and the National Council for Social Security Fund. Thus, the Revenue argued that CDB does not meet the criteria for exemption as a wholly government-owned financial institution.

Amendment Dispute: The Revenue also challenges the applicability of the amended Article 11(3) of the DTAA, effective from 17 July 2019, which specifically includes CDB in the list of institutions wholly owned by the Government of China. The Revenue argues that this amendment, which post-dates the relevant financial year (FY 2015-16), should not retroactively apply to the case.

Held

The Delhi Income Tax Appellate Tribunal (Delhi ITAT) concluded that the assessee is entitled to the benefits under Article 11(3) of the India-China DTAA, which exempts interest payments made to CDB from tax in India based on the following aspects:

- **Protocol Clarification**: The 2019 protocol to the DTAA clarified that CDB is a financial institution wholly owned by the Government of China, which aligns with the definition provided under Article 11(3) of the DTAA.
- **Tax Exemption Confirmation**: Interest payments made by the assessee to CDB are exempt from tax in India based on the DTAA provisions.
- **Revenue's Appeal Dismissed**: The Revenue's appeal challenging the exemption of CDB was dismissed, upholding the CIT(A)'s favorable decision for the assessee.

Our Comments

The case underscores the importance of Article 11(3) of the DTAA, which exempts interest payments to government-owned financial institutions from tax. By affirming that the CBD is covered under this provision as a wholly government-owned institution, the ruling emphasizes the DTAA's effectiveness in providing clarity and certainty in international tax matters, thereby protecting taxpayers from undue tax liabilities and disputes.

Whether payments for accessing online educational content should be considered as income from providing technical services and thus subject to tax?

Coursera Inc. TS-610-ITAT-2024(DEL)

Facts

Coursera Inc., a USA-based company operating a global online learning platform, was involved in a tax dispute with Indian authorities over the tax treatment of its receipts from Indian customers. Coursera offers access to courses and degrees from various universities and companies through its platform but does not create the content itself. Instead, it acts as an intermediary, providing access to these courses for a fee.

The Indian tax authorities contended that Coursera's receipts should be classified as Fees for Technical Services (FTS) or Fees for Included Services (FIS) under the tax treaty between India and the US. The authorities argued that Coursera provides technical services, including user-specific services and support, which they claimed involved the transfer of technical knowledge.

Held

The Delhi Income Tax Appellate Tribunal (Delhi ITAT) ruled that Coursera is a aggregator of educational content, not a provider of technical services. Therefore, its receipts from Indian customers do not qualify as FTS or FIS under the tax treaty.

The Delhi ITAT noted that the Assessing Officer (AO) failed to properly review the agreement between Coursera Inc. and Gandhi Institute of Technology and Management, leading to an incorrect conclusion.

The services provided by Coursera did not involve the transfer of technical knowledge or skills, and thus did not meet the 'make available' condition under Article 12(4) of the India-USA DTAA.

The Revenue could not prove that Coursera's services involved transferring technical knowledge that would enable the recipient to use it independently and therefore, the Revenue's appeal was dismissed.

Our Comments

This case highlights the difference between just providing a platform for services and offering technical services as defined under Article 12(4) of the India-USA DTAA.

Transfer Pricing

Dismisses assessee's miscellaneous application for rectifying earlier order with respect to interest on receivables

BA Continum India Private Limited [TS-339-ITAT-2024(HYD)-TP]

Facts of the case

The assessee filed a Miscellaneous Application (MA) for rectification/ amendment of the Tribunal's order for AY 2018-19. The Ld Assessee Representative (AR) submitted that the direction given by the Tribunal in Para 9 of the order is required to be modified, as powers of the Transfer Pricing Officer (TPO) pursuant to the direction of the Tribunal cannot be restricted. Furthermore , it was the contention of the Ld AR that ground numbers 2(a) and 2(d) have not been adjudicated by the Tribunal.

In the case, the Dispute Resolution Panel (DRP) had decided the issue with respect to interest on receivable in Paras 2.1.17 to 2.1.21 of its order whereby the DRP has held that the SBI short-term rate as applicable for outstanding receivables beyond credit period of 30 days is to be applied. However, the Tribunal, while remanding the matter to the file of the TPO had directed to decide the issues considering the decision in the case of Zeta Interactive, Satyam Venture, and Apache Footware.

ITAT order

The Tribunal held that it has merely remanded the issue to the file of the TPO with the direction to consider various judgments of the Tribunal and in that view, there is no error in the order passed by the Tribunal. Furthermore, the Tribunal noted that the assessee had relied upon the HC's decision in the case of Laxman Das Bhatia Hingwala (P) Ltd. to buttress that the Tribunal has the power to rectify its order. The Tribunal held that once the issue has been settled by the Hon'ble Supreme Court whereby the power of the Tribunal has been interpreted in the manner mentioned in the case of Reliance Telecommunication then this judgment of the Hon'ble Delhi High Court has no significance and relevance.

In connection with grounds not adjudicated by the Tribunal, it held that these grounds were not raised specifically by the assessee during the course of the hearing and accordingly, there was no occasion to decide the issue.

Our Comments

During assessment proceedings before ITAT or any other tax authority, it is important that all the grounds are specifically raised/pressed for adjudication/discussion. Furthermore, the ITAT does not have the power to recall an order except where a mistake is apparent from the record, as held by the SC in the case of Reliance Telecom Ltd.

Confirms deletion of Section 271G penalty; notes no violation of Section 92D, follows earlier order

Laxmi Diamond Private Limited [TS-342-ITAT-2024(Mum)-TP]

Facts of the case

The assessee, being the flagship entity of the group, is mainly engaged in a diamond business related to the manufacturing and training segment of diamond industries.

During the proceedings before the TPO, the assessee was unable to submit the documents as per the provisions of Section 92D(3) of the ITA read with rule 10(B)(1)(e) of the Income Tax Rules, 1962 (the rule). The Ld AO initiated the penalty proceedings under Section 271G and finally, the penalty was levied at 2% of the total value of relevant international transactions.

The aggrieved assessee filed an appeal before the Ld CIT(A). The Ld CIT(A), considering the asessee's submission, deleted the penalty and allowed the assessee's appeal.

Aggrieved with the appeal order, the Revenue filed an appeal before the ITAT.

Revenue's contention before ITAT

The Revenue argued that the CIT(A) erred in deleting the penalty under Section 271G by holding that the assessee had made substantial compliance, failing to note that under TNMM adopted by the assessee, the profit, including segmental account of the international transaction had to be furnished as asked for, whereas the assessee had only furnished the entity level margin.

Held by ITAT

The ITAT dismissed the appeal of the Revenue basis the facts and circumstances of levy of penalty under Section 271G for AY 2011-12 being identical to that for AY 2012-13. In the order for AY 2011-12, the ITAT observed that keeping in view of the nature of the diamond business in which the assessee is engaged, it has substantially complied with the requirement of filing documents with respect to segmental amount relating to transactions with AE and non-AEs for determination of ALP of international transaction. Furthermore, the ITAT relied on the observation of CIT(A), wherein it observed that since there is no adjustment made in the arm's length price, the penalty so imposed is not justified. In doing so, CIT(A) also relied on various judicial pronouncements having similar facts, wherein penalty has been deleted under Section 271G of the ITA, when no adjustment in arm's length price was made.

Our Comments

The ITAT upheld the decision of CIT(A), which highlights that when the TPO makes no TP addition after perusal of TP study report, then the penalty levied under Section 271G for non-submission of documents under Section 92D is not sustainable.

Indirect Tax

Mineral Area Development Authority & Anr. vs Steel Authority of India & Anr. [TS-287-SC-2024-NT] and [TS-318-SC-2024-NT]

Whether Royalty in respect of mineral rights payable under the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) is in the nature of 'tax', and whether the State legislatures lack the competence to levy tax on such mineral rights?

Note: Regulation of mines and mineral development is enumerated under both the Union List (Entry 54 of List I) and the State List (Entry 23 of List II) of the Seventh Schedule to the Constitution. The entrustment of the subject to the State legislatures under Entry 23 of List II is subject to the provisions of Entry 54 of List I.

Furthermore, Entry 50 of List II pertains to "taxes on mineral rights subject to any limitations imposed by the Parliament by law relating to mineral development."

On the other hand, Entry 49 of List II empowers States to levy taxes on land and buildings.

Facts

- In **India Cement vs State of Tamil Nadu** [(1990) 1 SCC 12 (34)], a seven-Judge Bench of the Supreme Court held that the Royalty payable under the MMDR Act is a tax and the States lack competence to either levy taxes on mineral rights covered by the said Act or use the same as a measure for imposing tax on mineral-bearing lands under Entry 49 of List II (State List).
- Later, a Constitution Bench of the Supreme Court, in **State of West Bengal vs Kesoram Industries Ltd** [(2004) 10 SCC 201 (71)] held that the ratio in India Cements (supra) stemmed from an inadvertent error and clarified that Royalty is not a tax.
- In the aftermath of the aforesaid decisions, various States continued to impose taxes on mineral-bearing land in pursuance of Entry 49 of List II by applying the mineral value or Royalty as the measure of the tax.
- The levies were assailed before the High Courts and when, in one such matter, a civil appeal was filed before the Apex Court, the three-Judge Bench noticed the divergence between India Cements (supra) and Kesoram (supra) and, accordingly, referred the relevant questions to a nine-Judge Bench.

Ruling

- After extensively discussing the scheme of distribution of legislative powers and constitutional limitations, the nine-Judge Bench, proceeded to delve into pertinent questions as follows:

  i. Whether Royalty under the MMDR Act is in the nature of tax?

  - The major conceptual differences between 'Royalty' and 'tax' are:

    a. The proprietor charges Royalty as a consideration for parting with the right to win minerals, while a tax is an imposition of a sovereign;

    b. Royalty is paid in consideration of doing a particular action, i.e., extracting minerals from the soil, while tax is generally levied with respect to a taxable event determined by law; and

c. Royalty generally flows from the lease deed as compared to tax which is imposed by the authority of law.

- Contractual payments due to the government cannot be deemed to be a tax merely because the statute provides for their recovery as arrears.
- The principles applicable to 'Royalty' also apply to 'dead rent', which is imposed in the exercise of the proprietary right (and not a sovereign right) by the lessor to ensure that the mine is not kept idle, and there is constant flow of income. Dead rent is an alternative to Royalty.

ii. Whether MMDR Act imposes restrictions on States' power to tax mining rights under Entry 50 of List II?

- The field of taxation cannot be derived from the regulatory legislative entries and has to be derived from a specified taxing entry.
- Taxation of mineral rights vests with the State legislature under Entry 50 of List II. Parliament can neither impose a tax on mineral rights under Entry 54 of List I, nor resort to its residuary powers under Entry 97 of List I to tax such mineral rights.
- The fixation of Royalty rates under section 9 of MMDR Act falls within the regulatory powers of the Parliament under Entry 54 of List I.
- Further, there is no specific provision in the MMDR Act which imposes limitations on the powers of the States to tax mineral rights. Hence, the scheme of MMDR Act cannot by a process of stretched construction be read to limit the taxing powers of States under Entry 50.
- Unless the Parliament imposes a limitation 'by law' relating to mineral development, the plenary power of the State legislature is unaffected.

iii. Whether States can tax mineral-bearing land under Entry 49 of List II? Whether mineral produce or Royalty can be used as a measure to tax mineral-bearing lands?

- In their natural state, minerals or ores are part of the earth and remain embedded there unless extracted. It is also established that 'lands' include everything over and below the surface. Therefore, constitutionally speaking, sub-soil minerals also form a part of land.
- There is a distinction between the legislative fields – Entry 49 relates to the taxation of land as a unit, whereas Entry 50 provides for the taxation of mineral rights. Ultimately, however, it must be borne in mind that both Entries 49 and 50 fall within the domain of the State legislatures.
- Moreover, the fact that Entry 50 of List II pertains to taxes on mineral rights would not preclude the State legislature from using the measure of mineral value or mineral produce or Royalty under Entry 49 of List II. Both entries operate in different fields without any overlap.
- The State legislature has legislative discretion to determine the appropriate measure for the purposes of quantifying taxes, so long as there is a reasonable nexus between the measure and the nature of the tax.
- Accordingly, the Apex Court, with 8:1 majority, overruled the decisions inter alia in **India Cements** (supra), **Orissa Cement Ltd. vs State of Orissa** [1991 Supp (1) SCC 430], **State of M.P. vs Mahalaxmi Fabric Mills Ltd.** [1995 Supp (1) SCC 642], **Saurashtra Cement and Chemical Industries Ltd. vs Union of India** [(2001) 1 SCC 91] to the extent of the observations made in the present case.

Dissenting view

Justice B.V. Nagarathna dissented from the majority opinion, stating that the primary goal of the MMDR Act is to encourage mineral development and mining activities. Accordingly, allowing States to impose additional levies and cesses on top of the royalties would undermine this objective.

Consequent to the aforesaid verdict, the Supreme Court was called upon to determine the applicability of this judgment. The Union pressed for invocation of the doctrine of prospective overruling, considering that India Cements held the field for 35 years.

Bearing in mind the consequences that would emanate from the past period, the Supreme Court directed the following conditionalities to prevail, vide Order dated 14 August 2024:

a. While the States may levy or renew demands of tax, if any, pertaining to Entries 49 and 50 of List II, the demand shall not operate on transactions made prior to 1 April 2005;

b. The time for payment of tax demand shall be staggered in installments over a period of twelve years commencing from 1 April 2026; and

c. The levy of interest and penalty on demands made for the period prior to 25 July 2024 shall stand waived for all the assessees.

Our Comments

The nine-Judge Bench judgement finally settled the decades-old controversy relating to the taxation of mineral rights by the States.

Besides demarcating the scheme of distribution of legislative powers between the Union and the States, the judgment also explains the difference between the two types of legislative subjects, viz regulatory and tax subjects.

This verdict would clearly have a bearing on the ongoing litigation with respect to the levy of service tax/GST on Royalty vis-à-vis mining operations or explorations.

It may be expedient for the GST Council/CBIC-TRU to issue appropriate clarification on the implications of this judgment on the levy of tax on the grant of mining lease/Royalty under the GST regime.

Alerts

Gist of Circulars issued by CBIC on 11 September 2024
13 September 2024
https://tinyurl.com/2k8zduve

Highlights of the 54th GST Council Meeting
11 September 2024
https://tinyurl.com/2vsbcuhk

Delhi HC reinstates tax exemption for Tiger Global's Flipkart Sale, reversing AAR's tax avoidance claim
6 September 2024
https://tinyurl.com/4jdrsewv

Key Highlights of GST Notifications and Clarification Circulars
5 August 2024
https://lnkd.in/dXETipkF

Tax Talk

Indian Developments

Direct Tax

Section 144B of the ITA - Faceless assessment

Order F. NO. 187/7/2024-ITA-I dated 1 August 2024

As per Section 144B(5) of the ITA, 1961, all communications within various units of National Faceless Assessment Centre (NFAC) and between NFAC and the assessee shall be through NFAC and shall be exchanged exclusively by electronic mode.

However, it is provided that the provisions of this sub-section shall not apply to the inquiry or verification conducted by the verification unit in the circumstances as may be specified by the Board on this behalf.

Thus, the Central Board of Direct Taxes specifies the following circumstances for the purpose of enquiry or verification functions referred to in Section 144B(3)(iii) of the ITA by the Verification Unit:

i. Non-availability of digital footprint in respect of the assessee or any other person.

ii. Electronic or Online verification is not possible on account of no response to notice issued to the assessee or any other person.

iii. Physical verification of assets or premises or persons is required, regardless of the presence of digital footprint.

Non- applicability of higher rate of TDS/TCS in the event of death of deductee/collectee before linkage of PAN and Aadhar Registration

Circular No. 081 2024 dated 5 August 2024

As per Section 206AA/206CC, TDS/TCS shall be deducted at higher rates in case of non-linking of PAN and Aadhaar. The Board, had earlier provided an extension in case where a transaction is entered up to 31 March 2024 and PAN - Aadhaar is linked before 31 May 2024, 206AA/206CC shall not apply.

The board, hereby specifies that in respect of cases where a higher rate of TDS/TCS was attracted under section 206AA/206CC of the act pertaining to the transactions entered into up to 31 March 2024 and in case of demise of the deductee/collectee on or before 31 May 2024, i.e., before the linkage of PAN and Aadhaar could have been done, there shall be no liability on the deductor/collector to deduct/collect the tax under Section 206AA/206CC, as the case maybe.

The deduction/collection, as mandated in other provisions of Chapter XVII-B or Chapter XVII-BB of the ITA, shall be applicable.

Income tax clearance certificate

Press Release dated 20 August 2024

Section 230(1A) of the ITA, 1961 relates to obtaining of a tax clearance certificate, in certain circumstances, by persons domiciled in India.

There was an amendment to this section in budget 2024 to cover the liabilities under the Black Money Act in the same manner as the liabilities under the ITA, 1961 for the purpose of tax clearance certificate. However, the amendment is misinterpreted that all Indian citizens must obtain Income Tax Clearance Certificate (ITCC) before leaving the country, which is factually incorrect.

In view thereof, it is clarified that the ITCC, under Section 230(1A) of the ITA, is needed by residents domiciled in India only in rare cases, such as;

i. Where a person is involved in serious financial irregularities. OR

ii. Where a tax demand of more than INR 1 Million is pending, which is not stayed by any authority.

Indirect Tax

Customs

CBIC extends ADD on import of 'CPVC – resins or compound' from China PR and Korea RP

Notification No 15/2024–Customs (ADD) dated 23 August 2024

The Central Board of Indirect Taxes and Customs (CBIC) has extended the levy of Anti-dumping Duty (ADD) on the import of Chlorinated Polyvinyl Chloride Resin (CPVC) – whether or not further processed into the compound, falling under heading 3904 originating in or exported from China PR and Korea RP, by a further period of five years. The ADD shall be payable in Indian currency.

Automated customs clearance processes for EOUs under IGCRS Rules implemented from 1 September 2024

Circular No 11/2024-Customs dated 25 August 2024

In terms of the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 read with Notification No. 52/2003-Customs (as amended), Export Oriented Units (EOUs) are required to adhere to the Customs clearance procedures outlined in Rule 5 thereof.

With the completion of necessary developments in the system to allow clearances to EOUs under IGCR, the CBIC has advised all EOUs to obtain IGCR Identification Number (IIN) at ICEGATE portal and to register their IGCR bond for filing a bill of entry with IGCR benefit. The same process would be used for clearances from SEZ to EOUs as well. The changes have been implemented w.e.f. 1 September 2024.

Foreign Trade Policy (FTP)

DGFT facilitates eBRC self-certification process with two additional functionalities

Trade Notice No 12/2024-2025 dated 14 August 2024

- Vide Trade Notice No 33/2023-24 dated 10 November 2023, the Directorate General of Foreign Trade (DGFT) had piloted an online self-certification process for the generation of electronic Bank Realization Certificates (eBRCs) by exporters. The Directorate has now integrated banks with the eBRC system, thereby facilitating the automatic transmission of Inward Remittance Messages (IRMs) for all Trade Account transactions.
- In furtherance to the aforesaid developments, the DGFT has introduced two additional functionalities effective from 20 August 2024, viz:
  - Bulk upload using the prescribed spreadsheet, which contains the requisite IRM mapping along with shipping bill and invoice details.
  - Application Programming Interface (API) Integration between DGFT eBRC system and ERP/Accounting or other software. For enabling API integration, the exporters are required to complete an online registration process specifying the Importer -Exporter Code (IEC) for which the API will be utilized. This registration should be authenticated through the IEC holder's account. Furthermore, the exporters are responsible for managing API consumer access, including its activation, deactivation, and re-authorization.

DGFT launches Revamped Non-preferential Certificate of Origin (eCoO) 2.0 System

Trade Notice No 13/2024-2025 dated 16 August 2024

DGFT has launched the upgraded Non-preferential Certificate of Origin (eCoO) 2.0 system, for streamlining the certification process for exporters. Some notable features of the revamped system include:

i. Multi-user access for single IEC,

ii. Aadhaar-based e-signing option, and

iii. Seamless access to eCoO and other related services such as FTA information, trade events, etc.

Exporters have been allowed to file Non-preferential Certificates of Origin through the new system with issuing agencies from 28 August 2024.

Tax Talk

Global Developments

Direct Tax

Inclusive framework members make further progress in addressing harmful tax practices

Excerpts from oecd.org dated 27 August 2024

Jurisdictions have made further progress in addressing harmful tax practices by implementing the international standard under BEPS Action 5, as evidenced by the release of the latest results of the reviews by the Forum on Harmful Tax Practices (FHTP) of preferential tax regimes.

At its May 2024 meeting, the FHTP reached the following new conclusions on six regimes as part of the implementation of the Base Erosion and Profit Shifting (BEPS) Action 5 minimum standard on harmful tax practices:

#	Jurisdiction	Regime	Status	Comments
1	Armenia	Free economic zones	IP part: Abolished	Ring-fencing removed. Substance requirements (non-IP) in place.
			Non-IP part: Not harmful (amended)	Grandfathering in accordance with FHTP timelines.
2	Bulgaria	Tonnage tax	Not harmful	No harmful features.
3	Croatia	Investment promotion act	Under review	Regime under review by the FHTP.
4	Croatia	Tonnage tax	Not harmful	No harmful features.
5	Eswatini	Special economic zones	IP part: Abolished*	Ring-fencing removed. Substance requirements (non-IP) in place.
			Non-IP part: Not harmful (amended)*	Grandfathering in accordance with FHTP timelines.
6	Hong Kong (China)	Profits tax concession for aircraft lessors and aircraft leasing managers	Not harmful	Grandfathering in accordance with FHTP

Note: * Subject to the adoption of final legislation.

Transfer Pricing

Global update

CbC reporting updates in multiple countries

In recent years, the landscape of international tax compliance has undergone significant transformation, with an increasing emphasis on transparency and accountability. One of the key developments in this arena is the evolution of Country-by-Country (CbC) reporting , a crucial component of the BEPS Action Plan spearheaded by the OECD. CbC reporting requires multinational enterprises to disclose detailed financial and operational information on a country-by-country basis, enhancing the ability of tax authorities to assess and address tax risks effectively. Some of the latest updates and changes in CbC reporting in multiple countries are encapsulated as under:

- In Austria, the National Council has implemented public CbC reporting. This new law will take effect for financial years starting after 21 June 2024. For companies with financial years aligned with the calendar year, the first public CbC report will need to be prepared and published for 2025.

  Notable updates from the draft law include:

  - Clarified reporting timelines for ultimate parent and unaffiliated companies, and for subsidiaries and branches.
  - Income reporting aligned with national law and accounting principles.
  - Option to disclose information either aggregated or separately for different tax jurisdictions.
- On 1 August 2024, the European Commission launched a public consultation on standardizing the template and electronic formats for public CbC reports. The final template is expected to be adopted by the end of Q3 2024.
- Australian Senate Economics Legislation Committee recommended passing the legislation for public CbC reporting in Australia. However, coalition senators suggested amendments to:
  - Include a five-year deferral for sensitive information.
  - Clarify the Tax authorities' discretionary exemption.
  - Align the non-cooperative jurisdiction list with the EU Directive.
  - Provide details on jurisdiction listing and delisting.
  - Review the regime within one to two years of implementation.

UAE: FTA directive on Advance Pricing Agreements (APA)

The Federal Tax Authority (FTA) has issued a decision viz Decision No 4 of 2024, enunciating the FTA's policy on issuing clarifications & directives relating to federal taxes.

Article 59 of the Federal Decree law no 47 of 2022 provides that a person may make an application to FTA for entering into an Advance Pricing Agreement (APA) with respect to an existing/ proposed transaction with related parties. The FTA shall prescribe the form and manner in which application for APA should be made.

The said decision now clarifies that the start date for receiving APA applications, the procedures relating to submission and issuance of agreements will be announced by FTA during the fourth quarter of 2024.

Nevertheless, the UAE TP laws are broadly based on the OECD Guidelines; accordingly, it is expected that the UAE APA program will also be in line with Chapter IV of the OECD TP Guidelines.

Our Comments

The APA program will undoubtedly be an effective tool for resolving disputes, promoting tax certainty, and ensuring a consistent approach for related party transactions. However, since this is an optional scheme, the decision to opt for APA will lie with the businesses that need to evaluate the same basis the value of related party transactions as compared to the efforts and cost involved in the APA process.

Indirect Tax

Poland increases excise on tobacco products, approves cash-based VAT reporting for small businesses

Excerpts from various sources

Legislation increasing the excise duty on tobacco products and their substitutes was published on the Polish Legislation Centre's website on 2 August 2024. The bill also extends the excise duty scheme to vaping devices and establishes a one-year validity for excise stamps on electronic cigarette liquids.

Additionally, starting 1 January 2025, small businesses and entrepreneurs with annual sales below EUR 250,000 will have the option to use cash-based VAT reporting. This represents a change from the previous EUR 1.2 million threshold applicable to all businesses.

Under the cash-based system, taxpayers

will pay VAT only when receiving it and will deduct input VAT only when paying their suppliers' invoices. This differs from the accrual-based system, where VAT is reported basis the sales invoices issued and purchase invoices received.

Romania's new pre-completed eVAT returns from 1 August 2022

Excerpts from various sources

Romania has released draft legislation detailing the new format for pre-completed VAT returns, known as RO eVAT. Taxpayers must review and address any discrepancies in the listings of VAT transactions, which are derived from e-invoicing and Standard Audit File for Tax (SAF-T) , by the 20th of the month following the reporting period.

From 1 August 2024, Romanian taxpayers are required to approve a new monthly list of their VAT transactions, which effectively serves as a pre-filled return. This would be reconciled with their regular VAT return submitted to the Ministry of Finance and the National Agency for Fiscal Administration (ANAF). This measure was enacted through emergency ordinance (OUG) 70/2024, passed on 21 June 2024.

Phase I of e-invoicing mandate in Malaysia begins from 1 August 2024; 6-month soft launch until February 2025

Excerpts from vatcalc.com

From 1 August 2024, Malaysia launched its mandatory e-invoicing regime for B2B, B2C, and B2G transactions. The initial phase includes a soft launch, allowing taxpayers to choose between adopting the new e-invoicing system or continuing to report monthly consolidated e-invoices.

The schedule for the phased implementation of the pre-clearance e-invoicing regime is as follows:

- August 2024: Mandatory for taxpayers with an annual turnover exceeding MYR 100 million (approximately USD 21 million), affecting about 5000 taxpayers.
- January 2025: Applies to taxpayers with an annual turnover between MYR 25 million (approximately USD 5 million) and MYR 100 million.
- February 2025: Marks the end of the 6-month soft landing phase for the large taxpayers from the August 2024 wave.
- July 2025: Mandatory for all remaining taxpayers.

Businesses with annual sales below MYR 150,000 are exempt from this mandate.

Quotes and Coverage

Revenue losses, no compensation cess seen to be reasons for GoM wanting to retain current GST rate structure
4 September 2024
Business Today | Sanjay Chhabria
https://tinyurl.com/mswcvrmk

What can we expect from the 54th GST meeting on September 9? Insurance premiums,online gaming likely to get attention
28 August 2024
Financial Express | Sanjay Chhabria
https://tinyurl.com/2xxabbea

Indexation On Immovable Property For Computation of Capital Gains
27 August 2024
Good Returns | Sneha Pai
https://tinyurl.com/yxnu48d8

GST meet on Sept 9 to discuss rate rejig, levy on health insurance
13 August 2024
Financial Express| Sanjay Chhabria
https://tinyurl.com/4uwzwz2c

Compliance Calendar

Direct Tax
Indirect Tax

7 September 2024

- Securities Transaction Tax - Due date for deposit of tax collected for August 2024.
- Commodities Transaction Tax - Due date for deposit of tax collected for August 2024.
- Declaration under sub-section (1A) of Section 206C of the ITA, 1961 to be made by a buyer for obtaining goods without collection of tax for declarations received in August 2024 in Form 27C.
- Collection and recovery of equalization levy on specified services in August 2024.
- Due date for deposit of Tax deducted/collected for August 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 the production of an Income Tax Challan

10 September 2024

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

11 September 2024

- GSTR-1 for the month of August 2024 to be filed by all registered taxpayers not under QRMP scheme.

13 September 2024

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

14 September 2024

- Due date for issue of TDS Certificate for tax deducted under Section 194-IA in July 2024 in Form 16B.
- Due date for issue of TDS Certificate for tax deducted under Section 194-IB in July 2024 in Form 16C.
- Due date for issue of TDS Certificate for tax deducted under Section 194M in July 2024 in Form 16D.
- Due date for issue of TDS Certificate for tax deducted under Section 194S in July 2024 in Form 16E.

15 September 2024

- Due date for furnishing of Form 24G by an office of the government where TDS/TCS for August 2024.
- Second instalment of advance tax for the AY 2025-26.
- Due date for furnishing statement in Form No 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for August 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 August 2024.

20 September 2024

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

25 September 2024

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

30 September 2024

- Due date for filing of audit report under section 44AB for the Assessment Year 2024-25 in the case of a corporate assessee or non-corporate assessee (who is required to submit his/its return of income on 31 October 2024.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in August 2024.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IB in August 2024.
- Due date for furnishing of challan cum statement in respect of tax deducted under Section 194M in August 2024.
- Due date for furnishing of challan cum statement in respect of tax deducted under Section 194S in August 2024.
- Audit Report under Clause (ii) of Section 115VW of the ITA, 1961 (if due date of submission of return of income is 31 October 2024).
- Audit report under clause (b) of the tenth proviso to Clause (23C) of Section 10 and sub-clause (ii) of clause (b) of subsection (1) of Section 12A of the ITA, 1961, in the case of a fund or trust or institution or any university or other educational institution or any hospital or other medical institution. (if due date of submission of return of income is 31 October 2024).
- Audit report under Slause (b) of the tenth proviso to Clause (23C) of section 10 and sub-clause (ii) of clause (b) of sub-section (1) of Section 12A of the ITA, 1961, in the case of a fund or trust or institution or any university or other educational institution or any hospital or other medical institution which is required to be furnished under Clause (b) of the tenth proviso to Clause (23C) of Section 10 or a trust or institution which is required to be furnished under sub-clause (ii) of clause (b) of section 12A (if due date of submission of return of income is 31 October 2024).
- Audit report under Sections 80-I(7)/80-IA(7)/80-IB/80-IC/80-IAC/80-IE (if due date of submission of return of income is 31 October 2024).
- Report under section 80JJAA of the ITA, 1961 (if due date of submission of return of income is 31 October 2024.

Compliance Calendar

- Direct Tax
- Indirect Tax

- Certificate to be issued by accountant under Clause (23FF) of section 10 of the ITA, 1961 (if due date of submission of return of income is 31 October 2024).
- Verification by an Accountant under sub-rule (3) of Rule 21AJA Verification (if due date of submission of return of income is 31 October 2024).
- Report under Section 115JB of the ITA, 1961 for computing the book profits of the company (if due date of submission of return of income is 31 October 2024).
- Report under Section 115JC of the ITA, 1961 for computing Adjusted Total Income and Alternate Minimum Tax of the person other than a company (if due date of submission of return of income is 31 October 2024.
- Due date for filing audit report under Section 33AB(2) (if due date of submission of return of income is 31 October 2024).
- Due date for filing audit report under Section 33ABA(2) (if due date of submission of return of income is 31 October 2024).
- Audit Report under Section 35D(4)/35E(6) of the ITA, 1961 (if due date of submission of return of income is 31 October 2024).
- Statement regarding preliminary expenses incurred to be furnished under proviso to C lause (a) of sub-section (2) of section 35D of the ITA, 1961 by the assessee (if due date of submission of return of income is 31 October 2024).
- Audit report under sub-section (2) of Section 44DA of the ITA, 1961 (if due date of submission of return of income is 31 October 2024).
- Audit report to be filed by the Sovereign Wealth Fund claiming exemption under Clause (23FE) of section 10 of the ITA, 1961 (if due date of submission of return of income is 31 October 2024).
- Application for exercise of option under Clause (2) of the Explanation to sub-section (1) of Section 11 of the ITA, 1961 (if the assessee is required to submit return of income on 30 November 2024.
- Statement to be furnished to the AO/Prescribed Authority under Clause (a) of the Explanation 3 to the third proviso to Clause (23C) of section 10 or under Clause (a) of sub-section (2) of Section 11 of the ITA, 1961 (if the assessee is required to submit return of income on 30 November 2024).
- Report of an accountant to be furnished by an assessee under sub-section (3) of Section 50B of the ITA, 1961 relating to computation of capital gains in case of slump sale (if due date of submission of return of income is 31 October 2024.
- Report under Section 10AA of the ITA, 1961 (if due date of submission of return of income is 31 October 2024).

7 October 2024

- Securities Transaction Tax - Due date for deposit of tax collected for September 2024.
- Commodities Transaction Tax - Due date for deposit of tax collected for September 2024.
- Declaration under sub-section (1A) of Section 206C of the ITA, 1961 to be made by a buyer for obtaining goods without collection of tax for declarations received in September 2024.
- Collection and recovery of equalization levy on specified services in September 2024.
- Collection and recovery of equalization levy on e-commerce supply or services for the quarter ending 30 September 2024.
- Due date for deposit of tax deducted/collected for September 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 July 2024 to September 2024 when AO has permitted quarterly deposit of TDS under Section 192, 194A, 194D or 194H.

10 October 2024

- GSTR-7 for the month of September 2024 to be filed by taxpayers liable to TDS.
- GSTR-8 for the month of September 2024 to be filed by taxpayers liable to TCS.

11 October 2024

- GSTR-1 for the month of September 2024 by all registered taxpayers not under QRMP Scheme.

13 October 2024

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

Easy Remittance Tool

by Nexdigm

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

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.

We have been recognized over the years by global organizations, like the International Accounting Bulletin and Euro Money Publications, World Commerce and Contracting, Everest Group Peak Matrix® Assessment 2022, for Procurement Outsourcing (PO) and Finance and Accounting Outsourcing (FAO), ISG Provider Lens™ Quadrant 2023 for Procurement BPO and Transformation Services and Global Sourcing Association (GSA) UK.

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

USA Canada Poland UAE India Hong Kong Japan

www.nexdigm.com

Reach out to us at ThinkNext@nexdigm.com

Follow us on

Listen to our podcasts on all major platforms