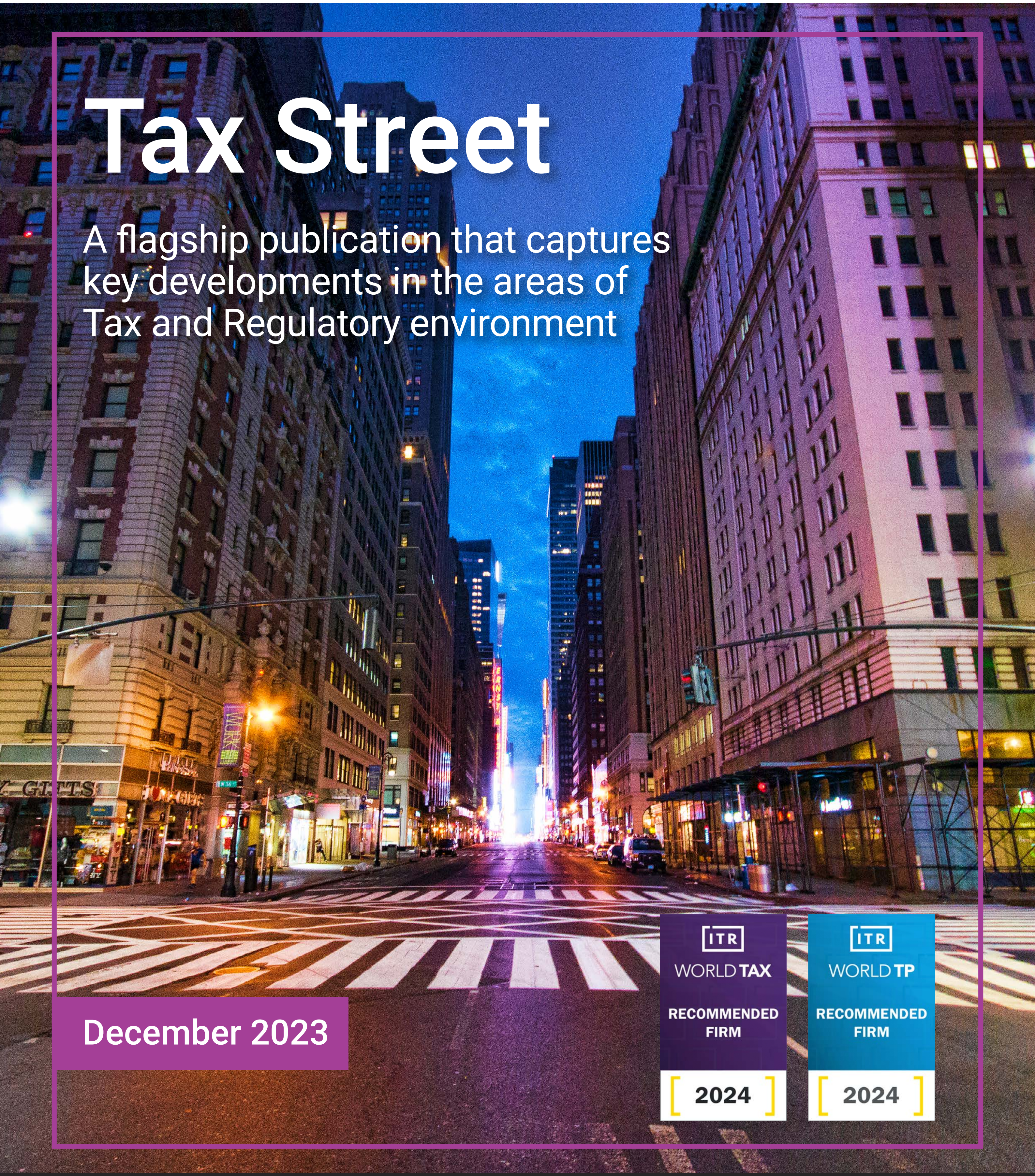
ia³ Enable • Optimize • Transform

nexdigm

SKP



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

December 2023

www.nexdigm.com

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 December 2023.

- The **'Focus Point'** covers the controversy surrounding the allowability of ESOP as an expense.
- 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

ESOP – Allowability as an expense in Income-tax Act,1961

Recently, the Employee Stock Options Plan (ESOP) has been introduced in many corporates as a reward scheme for an employee. ESOPs are used to create a sense of ownership in the company with an intent to retain highly productive and skillful employees. Such plans are options provided to employees to purchase shares of the company at a price lower than the Fair Market Value (FMV) of such shares. The price at which an employee exercises such options is known as the exercise price. The difference between the FMV and the exercise price of such shares is a cost for the employer that is amortized in the books of accounts as per the accounting standards and guidance notes.

Important terms related to ESOP

Grant Date– The date of the agreement between the employer and employee wherein the employer agrees to give the option to own shares to an employee.

Vesting of options- Vest means becoming an entitlement. Under an ESOP, the employee's right to receive shares vests when the employee fulfills all the vesting conditions. The vesting period is when the conditions are to be satisfied by the employee.

Exercise period- The period after vesting within which the employee should exercise his right to apply for the shares.

Taxation of ESOPs

In the hands of employees: ESOPs are taxed under the head salaries as a perquisite under Section 17(2)(vi) of the Income-tax Act, 1961 (the Act). The taxable amount is the difference between the FMV of the share on the exercise date and the exercise price.

For the employers

Accounting of ESOP costs – ICAI Guidance Note

The ICAI Guidance Note on Accounting for share-based payments(2020) establishes the financial accounting and reporting principles for share-based payments. As per the Guidance Note, the services rendered by an employee during the vesting period are treated as a consideration for the ESOPs and it requires companies to account for the services on a time proportion basis with a credit to equity account.

Litigative issue as per income tax provisions

There has been prolonged litigation regarding the allowability of such costs of services booked on a time proportion basis while computing the "Profits and gains from Business and Profession" of the employer. The Revenue Authorities are of the view that no expenditure has been incurred by the company at the time of grant/during the vesting period of shares under the ESOP scheme, and the expenditure has not crystallized or ascertained till the date on which the employee exercises the option. Hence, it has been the position of the Revenue Authorities that any cost debited to the profit and loss account during the vesting period remains contingent in nature and, hence, cannot be allowed as a deduction.

Another contention of the Revenue Authorities is that the expenditure is capital in nature, as the ultimate objective is related to the issuance of shares, which is not a business activity.

In response to the same, the assessee has contended that the liability is crystallized during the vesting period on the performance of the services by the employee, and it is only the quantification that remains pending.

Also, it is explained that the primary objective of ESOP is not to issue shares; rather, it is to award the employees to boost their productivity, leading to higher profits. Thus, this should be treated as Revenue Expenditure.

The matters have reached high courts across the country, and most of them have, so far, accepted the assessee's contentions and ruled in favor of the companies. Some of the recent judicial precedents in this regard are discussed below:

Karnataka High Court in the case of CIT v. Biocon Ltd.[1]

In this case, the ESOPs were granted to employees of the Company at a minimal exercise price. The ESOPs were vested in employees over a period of four years. The employer had claimed a deduction of the discount (Fair value of the shares less exercise price) on ESOPs over the vesting period. The accounting treatment of booking the cost on a time-proportionate basis was in accordance with SEBI Guidelines and the ICAI guidance note. The Karnataka High Court (HC) ruled in the assessee's favor and held that on the exercise of option, only the quantification of the liability will be finalized. This amount cannot be said to be contingent in nature and shall be treated as ascertained liability. The HC has also held that, as the primary objective was not to raise capital but to earn high profits by securing good employees, it cannot be held as capital in nature. Thus, it shall be allowable as a revenue expenditure under Section 37(1).

It is also pertinent to note that in the case of **CIT v PVP Ventures Ltd. (2012)**[2]**, the Madras HC** held similar facts that the taxpayer had followed the SEBI directions with respect to ESOPs and claimed such costs as a deduction. The costs booked have been allowed as a deduction, holding them to be an ascertained liability.

Another recent judgment of the **Delhi HC in the case of PCIT v New Delhi Television Ltd.**[3], in which the Court has placed reliance on the judgment of the Supreme Court (SC) in the case of **Hon'ble SC in Bharat Earth Movers [2000]**[4]. The Hon'ble SC has held that if a business liability has arisen in an accounting year, then the deduction should be allowed in that year itself, notwithstanding the fact that such liability is incapable of proper quantification at that stage and is dischargeable at a future date. The HC considered that in the given case, liability cannot be disallowed merely because the quantification cannot be done.

Cross charges paid to foreign holding companies

Another practical situation that can be seen is the payment of a cross charge by the Indian company to its foreign Holding Company for the cost of foreign companies' shares issued as ESOPs to the employees of the Indian company. The employees of the Indian subsidiary are issued ESOPs, allowing them to purchase the shares of the Holding Company. In such cases, the Holding Company recovers the difference between the FMV of the shares and the exercise price from the Indian subsidiary. The Indian companies claim such an amount as an expense, which has again been litigated by the Revenue Authorities.

In the case of Hewlett Packard (India) Software Operation Pvt Ltd vs DCIT (ITAT Banglore)[5], the Income Tax Appellate Tribunal (ITAT) has allowed the expenditure under Section 37(1), considering it wholly and exclusively for business. It was held that the amount of cross charges paid is the actual expenditure incurred for the employees and not notional and, thus, allowable.

Current position - ESOP controversy reaches sc

The issue of deductibility of ESOP costs has now reached the SC, which has allowed Revenue's Special Leave Petition (SLP) against Delhi HC ruling in NDTV (supra) and Karnataka HC Ruling in Biocon (supra). Two grounds to be taken in the final hearing will be:

- ESOP costs are a contingent liability, not crystallized, hence, deduction under Section 37(1) should not be allowed.
- ESOPs are an expense on 'capital,' and hence, the deduction should not be granted.

It will be interesting to see what the Hon'ble SC decides in this matter and whether its recent decision in the case of Bharti Hexacom[6] regarding capital vs. revenue expenditure turns the balance in favor of Revenue.

1. [2020] 121 taxmann.com 351 (Karnataka)
2. [2012] 23 taxmann.com 286 (Madras)
3. [2018] 99 taxmann.com 401 (Delhi)
4. 245 ITR 428
5. [2023] 149 taxmann.com 280 (Bangalore - Trib.)[03-10-2022]
6. [2023] 155 taxmann.com 322 (SC)

From the Judiciary

Direct Tax

How should the Dividend Distribution Tax (DDT) under Section 115-O paid by an Indian company to a non-resident shareholder be determined: by the rate prescribed under the Income-tax Act, 1961 (the Act), or by the rate specified in the Double Taxation Avoidance Agreement (DTAA)?

Total Energies Marketing India Pvt. Ltd
TS-660-ITAT-2023(Mum)

Facts

The assessee filed a return of income declaring an income of INR 1.86 billion and declared a dividend of INR 732.5 million to two shareholders. The assessee paid DDT under Section 115-O at 20.361%, amounting to INR 149.1 million, which was accepted by the Assessing officer (AO). However, AO disallowed reimbursement of demurrage charges and reimbursement of salary paid to seconded employees on account of non-deduction of tax at source under Section 195.

Aggrieved, the assessee carried the matter in appeal before the CIT(A), which was ruled partly in favor by deleting the disallowance under Section 40(a)(i). Before CIT(A), the assessee also claimed a refund of excess DDT for the reason that such dividend is chargeable to tax at 5% as per India-Slovenia DTAA read with MFN clause in India-France DTAA, for which AO was directed to give the credit of DDT after verification of the return of income, if eligible under the law. Aggrieved, the AO filed an appeal with the Tribunal, wherein the assessee has filed a cross objection for a refund of the excess DDT paid.

Held

ITAT denied the assessee's plea for a DDT refund on dividend paid to French shareholders in excess of tax-rate prescribed under India-France DTAA (10%) when read with MFN Clause in light of the tax-rate prescribed under India-Slovenia DTAA (5%).

ITAT also relied on a Special Bench ruling in the assessee's own case wherein it was held that where a dividend is declared, distributed, or paid by a domestic company to a non-resident shareholder, which attracts DDT under Section 115-O then tax shall be paid by the domestic company at the rate specified under Section 115-O and not the tax-rate applicable to the non-resident shareholder in the relevant DTAA for taxation of dividend.

Furthermore, ITAT also relied on SC's ruling in the case of Nestle SA, wherein it held that a notification under Section 90(1) is necessary and a mandatory condition for a Court, Tribunal, or an authority to give effect to a DTAA, or any protocol changing its terms that has the effect of altering the existing provisions of law.

ITAT upheld CIT(A)'s order to delete disallowance under Section 40(a)(i) on account of non-deduction of tax at source under Section 195.

Our Comments

It is important to note that the tax treaty benefit cannot be given to a domestic company paying dividends unless the contracting states to a tax treaty intend to extend treaty protection to the said company paying.

The ITAT's ruling has relied on and further confirmed the recent SC decision on the non-applicability of the benefit of the MFN clause to dividend income.

Can offshore supplies and inextricably linked services be brought under the ambit of taxability in India?

DSD Noell GMBH
TS-714-ITAT-2023(DEL)

Facts

DSD Noell GMBH (assessee), a German company, entered into an agreement with Hindustan Construction Company Ltd. (HCC), an Indian company, to carry out hydro-mechanical works in relation to setting up the Hydro Electric Power Project. The assessee received consideration from HCC for offshore supply of plant and equipment as well as for offshore services (involving supply of related drawings and designs), which were not offered to tax in India and the same was disputed by the AO as well as CIT(A).

Pursuant to the above, an appeal was filed with the Tribunal.

Held

The Delhi ITAT deleted the addition and held that no part of the consideration received outside India for offshore supplies of plant, equipment, and spares could be deemed to accrue or arise in India as per Section 9 in the hands of the assessee. The ITAT further observed that the assessee had no Permanent Establishment (PE) in India, and such consideration would only be in the nature of business income not attributable to PE in India and hence not taxable under Article 5 r.w. Article 7 of the India-Germany DTAA.

The ITAT noted that plant and equipment supplied to HCC were designed and manufactured outside India, the title was duly passed on to the customer outside India on a FOB basis, consideration for such offshore supplies was also received outside India, and all activities such as manufacturing, fabrication, designing, etc. of plant and equipment was undertaken outside India.

ITAT relied on SC judgment in the case of Ishikawajima-Harima and jurisdictional HC judgment in National Petroleum to observe where the property in respect of the goods is transferred to the buyer outside India, the sale of such goods has to be regarded as having completed outside the taxable territories of India. Hence, the income from such sale is not liable to tax in India.

Regarding offshore services of drawing and designs, ITAT observes that the drawings and design supplied are inextricably linked with the plant and equipment supplied by the assessee; ITAT relied on Jurisdictional HC judgment in the case of Linde AG and co-ordinate bench ruling in the case of SMS Concast to observe, "if design and engineering are inextricably linked with the manufacture and fabrication of the material and equipment to be supplied from overseas, and form an integral part of the said supply, then the services rendered would not be amenable to tax as Fees for Technical Services (FTS).

Our Comments

ITAT has relied on the landmark judgment of Ishikawajima-Harima and held that there is no accrual, or arising or deemed accrual or arising of income from offshore supplies as per Section 9(1)(i) of the Act. Furthermore, in the absence of a PE as per Article 5, no income would be attributable, and hence, the profits would be considered as business profits not chargeable to tax in India as per Article 7 of the DTAA between Germany and India.

As regards offshore services, the designs forming an integral part of the plant or equipment shall not be taxable as FTS in light of the judicial pronouncements laid down in this context.

Transfer Pricing

Withdrawal of Transfer Pricing related grounds due to Mutual Agreement Procedure (MAP) resolution

TechAspect Solutions Private Limited
ITA No.178 / Hyd / 2021

Facts

- The taxpayer had entered into MAP with the US Competent Authority (CA) for TP adjustment made for international transactions undertaken with its US-based Associated Enterprise (AE). In this regard, the taxpayer has appealed before ITAT to withdraw TP grounds for such a transaction.
- On the other hand, the AO made TP adjustment for software development services rendered to its UK-based AE, wherein the amount of adjustment was insignificant. The taxpayer made an appeal before the ITAT to withdraw the TP grounds for this transaction as well as its previous case.

Held by the ITAT

- In the first instance, referring to the MAP resolution provided by the CA, ITAT observed that under MAP provisions, the taxpayer needs to enclose the proof for withdrawal of the ongoing appeal. Considering the above, ITAT granted the permission to withdraw the TP grounds.
- Furthermore, in the second instance, considering the quantum of TP adjustment made for the transaction with UK-based AE, ITAT permitted the withdrawal of transfer pricing grounds pertaining to the determination of ALP of transactions of the AE situated in the UK due to the smallness of the amount. However, it was stated by the ITAT that withdrawal of the grounds may not be treated as precedent in the subsequent or previous assessment years having identical facts.

Our Comments

Given the challenges with the domestic tax law appeal process, MAP and Advance Pricing Agreement (APA) continue to be a preferred option for resolving/ preventing cross-border tax disputes, particularly in the area of TP. Such outcomes would further strengthen the relevance of MAP as an effective tool for dispute resolution mechanisms.

Order of TPO declared time barred due to delay in affixing the digital signature on the order document

Zydus Wellness Products Limited
ITA No. 1488/Mum/2021

Facts

- The taxpayer's case was referred by the AO to the Transfer Pricing Officer (TPO) for AY 2016-17. The order under Section 92CA (3) of the Act was dated 31 October 2019 but digitally signed by the TPO on 1 November 2019. Furthermore, the note at the bottom of page 1 of the order specifically mentioned that "if digitally signed, the date of the digital signature may be taken as the date of the document."
- The taxpayer, referring to the period of limitation referred to in Section 153 of the Act, challenged the validity of the order passed by the TPO under Section 92CA(3) of the Act and, thereby making the assessment order dated 30 June 2021 under Section 143(3) of the Act also as time-barred.
- The period of limitation for completion of the TP assessment in the case of the taxpayer for the impugned AY was 31 October 2019.

Held by the ITAT

- ITAT, taking reference from Section 282A of the Act read with Rule 127A of the Income Tax Rules, 1962 (the Rules) as well as the Board Instruction no. 1/2018 dated 12 February 2018 stated that unless the CA signs the order, it is incomplete, hence, not valid Thus, the date of the order is the date on which the CA signs. In view of the same, in the current scenario, the order is said to have been passed on 1 November 2019, which was the date when the TPO digitally signed it and not the date of the order, i.e., 31 October 2019.
- Furthermore, as per the provisions of Section 153(1) of the Act, no assessment order shall be made under Section 143(3) or 144 at any time after the expiry of 21 months (extended by 12 months in the case reference under Section 92CA(1) of the Act is made to the TPO) from the end of the AY in which the income was first assessable. Furthermore, Section 92CA(3A) mandates that an order under Section 92CA(3) may be made at any time before 60 days prior to the date of limitation referred to in Section 153.
- The ITAT, in view of the above, held that since the order was passed beyond the period of limitation (i.e., 60 days prior to the date of limitation as per Section 153), the extended period (i.e., 12 months in case reference made under Section 92CA(1) of the Act) is not available to the AO making the final assessment order dated 30 June 2021 also time-barred.

Our Comments

The ruling outlines the fact that the order is valid as on the date of signing of the order and not the date of the order. Though it's a very peculiar case, it highlights the relevance of challenging the validity of the TP Order by way of filing an additional ground of appeal (if not taken earlier) before the Appellate Authorities.

Quotes and Coverage

GST notices to Zomato, Swiggy: Is the move warranted? Here's what experts say
28 December 2023 | Business Today
Sanjay Chhabria
https://bit.ly/3tPT2Wn

FM moves legislation to set up GST Appellate Tribunals 'at the earliest'
13 December 2023 | The Hindu
Sanjay Chhabria
https://bit.ly/3TTnPME

Articles

5 Things early-stage start-ups must be aware of to avoid gst notices
3 January 2024
Sanjay Chhabria and Aditya Nadkarni
https://bit.ly/48D6ifQ

Indirect Tax

Denial of Input Tax Credit (ITC) on account of GSTR-2A vs. GSTR-3B mismatch

The Asst. Commissioner of State Tax & Ors. vs. Suncraft Energy Private Limited
TS-653-SC-2023-GST

Facts

- The Revenue had proceeded to reverse the ITC availed by the appellant in FY 2017-18 basis ITC mismatch in GSTR-2A vs. GSTR-3B. The appellant's stand that it had fulfilled all the conditions of Section 16(2) was rejected.
- Hence, the appellant approached the Calcutta HC by relying on landmark SC decisions in Bharti Airtel Ltd [(2022) 4 SCC 328] and Arise India Limited [MANU/DE/3361/2017] as well as the Press Releases dated 4 May 2018 and 18 October 2018.
- Observing that the Revenue had neither conducted any inquiry against the vendor nor brought out an exceptional case like collusion between the parties, missing vendor, or closure of business and such other contingencies, HC held that the Revenue was not justified in straightaway directing the appellant to reverse the ITC.
- It further emphasized the clarification that GSTR-2A is in the nature of taxpayer facilitation and does not impact the ability to avail ITC on the self-assessment basis in consonance with Section 16.
- Accordingly, HC allowed the appeal with a direction to the GST authorities to first proceed against the vendor and to initiate proceedings against the appellant only under exceptional circumstances.
- Against this, the Revenue approached the SC by way of a SLP.

Ruling

- Having regard to the facts and circumstances of the case and the low demand, SC refused to interfere in the matter.
- Accordingly, it dismissed the SLP filed by the Revenue.

Our Comments

Considering that the dismissal of SLP was with regard to the facts and circumstances of the case and the low demand, the same can be used for persuasive value in similar facts and circumstances but not as a binding precedent.

The question of law has been kept open, and the Apex Court could still entertain SLPs against HC judgments that have independently arrived at the same conclusion.

Entitlement to exemption from GST Compensation Cess to SEZ units

Maithan Alloys Ltd vs. Union of India
TS-677-HC(AP)-2023-GST

Facts

- The petitioner is an SEZ unit engaged in the manufacture of ferroalloys.
- Upon seeking clarification, the Director (SEZ) informed the petitioner that it was not entitled to exemption from GST Compensation Cess payable on the import of coal unless – (i) The Central Board Of Indirect Taxes and Customs (CBIC) issues an exemption Notification, or (ii) the First Schedule under Section 7 of the SEZ Act is amended by virtue of power under Section 54 of the said Act.
- Consequently, the Director (SEZ) demanded the submission of a bond along with a bank guarantee as a condition to allow the goods to be brought into the SEZ area.
- Hence, the petitioner approached the Andhra Pradesh HC.

Ruling

- HC noted that Sections 7, 26, and 50 of the SEZ Act are the three main provisions that allow the SEZ units to claim exemptions on duties, tax, cess, and certain drawbacks and concessions.
- In terms of Section 7, the GST (Compensation to States) Act, 2017 is not specified in the First Schedule of the SEZ Act, which is a sine qua non for claiming exemption.
- Referring to the Apex Court decision in Hind Energy and Coal Beneficiation (India) Ltd [AIR 2018 SC 5318], HC noted the distinction between 'tax,' 'duty' and 'cess' and found that the phrase "duty of customs" alone is used in Section 26(1)(a) of the SEZ Act, and not "cess".
- A conjunctive study of Section 26(1)(a), 2(zd) of the SEZ Act and Section 2(15) of the Customs Act would pellucidly tell that the phrase "duty of customs" only refers to the duty leviable under the Customs Act, and not cess under GST Compensation Act.
- Hence, HC did not accept the petitioner's contention that the duty exemption under the Customs Act/ Customs Tariff Act encompasses the Compensation Cess as well, merely because its rate of tariff is mentioned in Section 3(9) of the Customs Tariff Act.
- Consequently, HC found no merit in the writ petition while distinguishing the ruling in Flextronics Technologies (India) Pvt. Ltd [2016 (341) ELT 522 (Mad.)] as it dealt with anti-dumping duty and not cess.

Our Comments

The SEZ units engaged in the import/procurement of goods leviable to GST Compensation Cess may revisit their positions pursuant to this ruling.

While the matter could travel to the Apex Court, it would be worthwhile for the industry to make a representation to the government to accord similar treatment to the Compensation Cess as given to Customs Duty/IGST.

M&A Tax

ITAT Delhi: Significant disparities in valuation figures while determining fair value, liable for a comprehensive inquiry; matter remanded back for fresh determination

Citation: Sharp Eye Broadcasting Pvt.Ltd. (Delhi ITAT) (ITA No 1105/Delhi/2020), 20 November 2023

In the given case, the assessee, a broadcasting and telecast company, issued 4,90,000 fresh equity shares having a face value of INR 10 each at a premium of.92 per share, based on a valuation report wherein the Discounted Cash Flow (DCF) Method was followed. The AO rejected the report, claiming projected cash flows were exaggerated and also led to less than 1% of actual achievements. The AO determined the FMV at Rs.17.18 per share based on the Net Asset Value (NAV) method as per Rule 11UA of the Income Tax Rules, 1962. The excess premium was added to the assessee's income as per Section 56(2)(viib) of the Act.

The CIT(A) deleted the addition, holding that the AO cannot impose valuation methods and projections shouldn't be compared to actuals

The ITAT ruled that the AO is entitled to scrutinize the basis of projections that resulted in such hefty valuations and to scrutinize wide variances in estimations. The ITAT thus remanded the matter back to CIT(A) for a fresh determination.

Our Comments

The ruling emphasizes that the AO has powers to look into the valuation approach, and if he finds gross irregularities, they will have to be justified by the taxpayers, failing which he can make a fresh valuation.

Delhi HC: The eldest daughter of HUF to qualify as 'Karta' dismisses the challenge that only male members can be 'Karta.'

Citation: Manu Gupta vs Sujata Sharma & ORS (Delhi HC) (RFA(OS) 13/2016 & CM APPL. 6041/2016), (SC), 4 December 2023

In this case, the eldest surviving daughter of a Hindu Undivided Family (HUF) claimed her right to become the Karta based on the Hindu Succession (Amendment) Act, 2005, which grants daughters equal rights in the coparcenary property as a son. The claim was challenged by the eldest surviving male member of the HUF, who argued that the amendment only recognized equal inheritance rights for female members but did not grant them the right to manage the HUF property as Karta.

The Delhi HC has held that the amendment does not impose any such restrictions. The Hindu Succession (Amendment) Act, 2005, grants daughters the same rights (by birth) in the coparcenary property as a son, including the right to be a Karta. The HC concluded that neither the Legislature nor the traditional Hindu Law in any way limits the right of a woman to be a Karta. The HC also stated that if there were concerns about a female Karta's skills or influence, other coparceners had remedies like seeking partition or challenging wrongful property alienation.

Our Comments

This ruling is expected to have a widespread impact, particularly in HUFs across the country, where females hold the position of the eldest surviving member. The court has emphasized that societal perceptions should not be a basis for denying rights explicitly granted by the legislature.

Tax Talk

Indian Developments

Indirect Tax

Customs

Imports of 'Wheel Loaders,' 'Gypsum Tiles,' 'Industrial Laser Machinery', and 'Synthetic Grade Zeolite 4A' to attract Anti-Dumping Duty

Notification No. 14/2023-Cus (ADD) dated 11 December 2023, 15/2023-Cus (ADD) dated 22 December 2023, 16/2023-Cus (ADD) dated 26 December 2023, and 17/2023-Cus (ADD) dated 27 December 2023

The government has imposed Anti-Dumping Duty (ADD) at varied rates on the import of '**Synthetic Grade Zeolite 4A**' from Thailand and Iran for five years. Similarly, ADD has been imposed on '**Industrial Laser Machines, in fully assembled, SKD or CKD form, used for cutting, marking, or welding operations**' (including Laser Cutting Machines, Laser Marking Machines, and Laser Welding Machines) originating in or exported from China PR for five years. Import of '**Gypsum Board/Tiles with lamination on at least one side**' from China PR and Oman would also attract ADD at varied rates for five years. Furthermore, '**Wheel Loaders**' (except those specifically excluded) originating in or exported from China PR shall be exigible to ADD at varied rates.

CBIC streamlines the process for examining BIS registration compliance for imported Electronic and IT Goods

Instruction No. 28/2023-Cus dated 12 December 2023

The CBIC has issued instructions to Customs field formations to streamline the process, including sampling, for examining the importers' compliance with the mandatory requirement of registration with BIS or a specific exemption letter from the Ministry of Electronics and Information Technology (MeitY) in relation to notified goods under the "Electronic and Information Technology Goods (Requirement of Compulsory Registration) Order 2012.

Foreign Trade Policy

DGFT bans export of onions till March 31

Notification No. 49/2023 dated 07 December 2023

The Directorate General of Foreign Trade (DGFT) has prohibited the export of onions till 31 March 2024, w.e.f. 8 December 2023. However, it has prescribed some transitional arrangements for consignments of onions while also allowing exports on the basis of permission granted by the government to other countries based on their requests.

Mandatory electronic filing of Non-Preferential Certificate of Origin (CoO) deferred till December 2024

Trade Notice No. 36/2023-24 dated 26 December 2023

The DGFT has extended the transition period for mandatory filing of applications for Non-Preferential CoO through the Common Digital Platform till 31 December 2024. In this interim period, the existing system for processing Non-Preferential CoO applications in manual/paper mode is permitted, while the exporters and notified agencies would have the option of using the online system.

Tax Talk

Global Developments

Direct Tax

International tax reform: OECD/G20 Inclusive Framework releases new information on key aspects of the Two-Pillar Solution

Excerpts from oecd.org
dated 18 December 2023

Inclusive Framework on BEPS (Inclusive Framework) released further technical guidance to assist governments with the implementation of the global minimum tax under Pillar Two and a statement on the timeline of the Multilateral Convention (MLC) under Pillar One.

The Agreed Administrative Guidance for the Pillar Two Global Anti-Base Erosion (GloBE) Rules (December 2023) released today supplements the Commentary to the Global Anti-Base Erosion Model Rules in order to clarify their application, including guidance on the application of the Transitional Country-by-Country Reporting Safe Harbour and a mechanism for allocating taxes arising in a Blended Controlled Foreign Corporation (CFC) Tax Regime when some of the jurisdictions the MNE operates in are eligible for the safe harbor.

The Inclusive Framework will continue to release further Agreed Administrative Guidance on an ongoing basis in response to stakeholder requests for clarification of various aspects of the GloBE Rules and, where necessary, to address aggressive tax planning that may undermine the integrity of the rules or their application to certain MNE Groups. The Inclusive Framework will also continue to develop simplifications on key compliance items on a timely basis, which includes guidance expected in the first half of 2024 on the application of deferred tax liability recapture rules and the allocation of deferred taxes relating to cross-border taxes such as CFC Tax Regimes. The Inclusive Framework will also implement a robust and transparent peer review process and continue the ongoing work on the administrative framework and dispute resolution mechanisms with a view to providing a high level of tax certainty to stakeholders in applying the rules.

The Inclusive Framework also released today a statement updating the timeline to finalize the text of the MLC to implement the coordinated reallocation of taxing rights over the profits of the world's largest and most profitable companies (Amount A of Pillar One). The statement expresses the continued and strong commitment of Inclusive Framework delegates to resolve the outstanding issues, achieve a consensus-based solution, and finalize the text of the MLC as swiftly as possible.

Transfer Pricing

Mutual Agreement Procedure (MAP) – Information and Statistics[7]

The DTAA is a treaty between two countries that enables the following:

- Allocating taxing rights amongst the treaty partners;
- Avoidance of economic (same income getting taxed in the hands of two separate entities) and juridical double taxation (same income getting taxed twice in the hands of the same entity in two different jurisdictions);
- Resolution of issues relating to taxation not in accordance with the treaty through MAP.

MAP is an additional and alternate dispute resolution mechanism for cross-border transactions, which resolves the disputes relating to double taxation or any taxation disputes not in accordance with the DTAAs. It enables the CA of one country to engage with the CA of the other country and facilitates discussions and negotiations between both authorities to resolve international tax disputes.

All members of the Organisation for Economic Co-operation and Development (OECD)/G20 inclusive framework on Base Erosion and Profit Shifting (BEPS) commit to implementing the Action 14 minimum

7. https://www.oecd.org/tax/beps/oecd-releases-information-and-statistics-on-mutual-agreement-procedures.htm

standard, which seeks to improve the resolution of tax-related disputes between jurisdictions. Action 14 minimum standard is committed to having minimum standards reviewed and to have a robust peer review process to improve efficiencies and timeliness of resolution of disputes.

Statistics

The 2022 MAP statistics were released during the 5th OECD Tax Certainty Day, which covered 133 jurisdictions and practically all MAP cases worldwide. The key observations are given below for ease of reference:

- Increase in new MAP cases in 2022 by almost 3% compared to 2021.
- Fewer cases were closed in 2022, approximately 4% less as compared to 2021 (as many competent authorities prioritized simpler cases)
- Around 73% of MAP cases were concluded as fully resolved issues for transfer pricing cases (TP) and other cases, and 2% of MAP cases were concluded with no agreement.
- During the year 2022, it was observed that the MAP cases were closed in 25.3 months as compared to 26 months in 2021. Furthermore, the TP cases took a record-breaking timeline of around 29 months as compared to 32.3 months in 2021.

The OECD also recognized efforts by CAs under various categories – the Netherlands was awarded as the most improved jurisdiction as it closed around 102 additional cases with positive outcomes as compared to 2021. The award for the pairs of jurisdictions that dealt the most effectively with their joint caseload went to Denmark-Ireland for TP cases and to Germany-Ireland for other cases.

Our Comments

The increasing trend in the MAP cases and MAP being a by-product of BEPS Action 14 minimum standards depicts that more taxpayers are inclined to MAP as a tool for the dispute resolution mechanism. While there is more work to be done, this highlights the significant investment made by jurisdictions into their competent authority functions in spite of the increasing strain on resources in general. With the governments advocating the use of MAP for dispute resolution, it would be worth watching if MAP would continue to provide complete and determinative, one-time, cost-effective solutions for international tax disputes.

Indirect Tax

Sri Lanka revises VAT exemption list starting 2024

Excerpts from lankabusinessonline.com

The Inland Revenue Department (IRD) of Sri Lanka has updated the list of goods and services exempted from VAT beginning 1 January 2024. As part of the amendments to the VAT Act passed in 2023, the IRD has inter alia provided import duty waiver on certain products like aircraft parts and goods for government infrastructure projects funded by foreign loans while continuing the exemption on healthcare services and medications except hospital room charges, financial services such as bank accounts, loans, and insurance, etc.

Polish government extends VAT reduction on basic food products

Excerpts from various sources

Poland has issued a regulation extending the application of reduced VAT rates on basic food products until 31 March 2024 and for medicinal products and selected products used in agricultural products until 31 December 2024. The move comes as part of the Inflation Shield Program for a reduced VAT rate of 0% as against the standard 5% rate.

The Netherlands waives default penalties for non-compliance with VAT E-commerce Package

Excerpts from various sources

The Dutch tax authority has announced a waiver of default penalties until 1 June 2024 for taxpayers failing to comply with the One Stop Shop (OSS) mechanisms of the EU VAT E-commerce Package. This includes a reversal of previously imposed payment default penalties. The waiver applies to all non-resident users of OSS mechanisms, regardless of whether they use the Union, Non-Union, or Import mechanisms. The EU VAT E-commerce Package requires both non-EU and EU providers to charge VAT on cross-border services and goods to consumers in the country of destination.

Greece issues guidance on VAT treatment of OTC derivatives

Excerpts from various sources

The Greek Ministry of Finance has issued two circulars to clarify the VAT treatment of revenues from certain over-the-counter (OTC) derivatives. The key takeaways are summarized below:

- **Circular E.2066/2023**: In accordance with the treatment under EU and national law, as well as the established case law of the Court of Justice for the European Union (CJEU), revenues arising from contracts for difference (CFDs) are subject to VAT at the rate of 24% because CFDs are derivatives that are not traded on a stock market and are utilized for hedging risks.
- **Circular E.2068/2023:** Supply of services and respective income therefrom related to transactions concerning OTC derivatives, when at least one of the contracting parties is a credit institution or an Investment Services Company (AEPEY), is exempt from VAT. Furthermore, clarification is also provided when one of the parties to a CFD is established outside Greece.

Events and Webinars

Top Tax Rulings for 2023
19 December 2023
Maulik Doshi

Alerts

Government eases policy for import of used IT assets from SEZ to DTA, subject to conditions
5 January 2024
https://bit.ly/47oYoFO

Key Highlights of GST Notifications and Clarification Circulars December 2023
5 Janaury 2024
https://bit.ly/3S8ubGK

CBDT amends Safe Harbour Rule 10TA and Rule 10TD effective 1 April 2024
20 December 2023
https://bit.ly/48NErcU

Compliance Calendar

Direct Tax
Indirect Tax

7 January 2024

- The due date for deposit of tax deducted [except under Section 194-IA, Section 194-IB, Section 194M, or Section 194S (by specified person)] or collected for December 2023. However, all the 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.
- The due date for deposit of TDS for the period October 2023 to December 2023 when AO has permitted quarterly deposit of TDS under Sections 192, 194A, 194D or 194H.

10 January 2024

- GSTR-7 for December 2023 to be filed by taxpayers liable to Tax Deducted at Source (TDS).
- GSTR-8 for December 2023 to be filed by taxpayers liable to Tax Collected at Source (TCS).

11 January 2024

- GSTR-1 to be filed for December 2023 by all registered taxpayers, not under the QRMP scheme.

13 January 2024

- GSTR-6 for December 2023 to be filed by Input Service Distributors (ISDs).
- GSTR-1 for the quarter of October 2023 to December 2023 to be filed by all taxpayers under the QRMP scheme.
- GSTR-5 for December 2023 to be filed by Non-Resident Foreign taxpayers.

14 January 2024

- The due date for issue of TDS Certificate for tax deducted under Section 194-IA, 194-IB, 194M and 194S in the month of November 2023.
  Note: Applicable in case of specified person as mentioned under Section 194S.

15 January 2024

- The due date for furnishing of Form 24G by an office of the Government where TDS/TCS for December 2023 has been paid without the production of a challan.
- Quarterly statement of TCS for the quarter ending 31 December 2023.
- Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending December 2023.
- The due date for furnishing of Form 15G/15H declarations received during the quarter ending December 2023.
- Furnishing of statement in Form No. 49BA under Rule 114AAB (by specified fund) for the quarter ending 31 December 2023.

20 January 2024

- GSTR-5A for December 2023 to be filed by foreign suppliers of Online Database Access and Retrieval (OIDAR) and Online Money Gaming services.
- GSTR-3B for December 2023 to be filed by all taxpayers not under QRMP scheme.

22 January 2024

- GSTR-3B for the quarter of October 2023 to December 2023 to be filed by taxpayers under the QRMP scheme and having principal place of business in Category 1 States.

24 January 2024

- GSTR-3B for the quarter of October 2023 to December 2023 to be filed by taxpayers under the QRMP scheme and having principal place of business in Category 2 States.

Compliance Calendar

Direct Tax
Indirect Tax

30 January 2024

- Quarterly TCS certificate in respect of quarter ending 31 December 2023.
- The due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA /194-IB/194M and 194S in December 2023.
  Note: Applicable in case of a specified person as mentioned under section 194S.
- The due date for furnishing of report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is 1 January 2022 to 31 December 2022) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report under Section 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.

31 January 2024

- Quarterly statement of TDS for the quarter ending 31 December 2023.
- Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending 31 December 2023.
- Exercising the option to opt for alternative tax regime under Section 115BAA by a domestic company for AY 2021-22.
- Intimation by Sovereign Wealth Fund in respect of investment made in India for the quarter ending December 2023.
- Intimation by a pension fund in respect of investment made in India for the quarter ending 31 December 2023.

7 February 2024

- The due date for the deposit of tax deducted/collected for January 2023. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day when tax is paid without production of an Income-tax Challan.

10 February 2024

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

11 February 2024

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

13 February 2024

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

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

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