

LUTHRA & LUTHRA LLP

CHARTERED ACCOUNTANTS

International Taxation

ISSUE DECEMBER 2023



Highlights



- CBDT extended the processing timeline for 'non-scrutiny ITRs' for Assessment Years 2018-19 to 2020-21
- CBDT notifies Punjab Infrastructure Regulatory Authority for Sec.10(46) exemption
- CBDT revises definition of 'intra-group loan' and outlines its 'Safe Harbor' conditions under Rule 10TD
- Net Direct Collections and Advance Tax Collections for FY 2023-24 increases by more than 20.66% and 19.94% respectively
- Kuwait joins OECD/G20 BEPS Inclusive Framework, commits participation in Two-Pillar Solution
- Fiji joins OECD Global Forum for Tax Transparency & Information Exchange as 169th member
- US Tax Court rules out Brazilian legal restriction in determining ALP for intangibles in Coca-Cola's case
- Overview of the UAE Transfer Pricing Rules
- Zydus Wellness Products Limited vs. Dy. Commissioner of Income Tax

What's Inside



NEWS HIGHLIGHTS

1



INDIAN GLOBAL UPDATES

3



TRANSFER PRICING/BEPS

4



ISSUE OF THE MONTH

5



LEGAL CORNER

7



GLOSSARY OF TERMS

9

News Highlights



The CBDT extended the processing timeline for 'non-scrutiny ITRs' for Assessment Years 2018-19 to 2020-21

The CBDT, extended the time-frame for processing ITRs under Section 143(1) for Assessment Years (AYs) 2018-19, 2019-20, and 2020-21. The intimation of processing ITRs can now be sent to the assessee by January 31, 2024. The directive allows the processing of electronically filed ITRs with refund claims for the specified AYs, subject to prior administrative approval. However, certain exceptions apply, including ITRs under scrutiny, those showing demand in the return or likely to arise, and those unprocessed for reasons attributable to the assessee.

CBDT notified Punjab Infrastructure Regulatory Authority for Sec.10(46) exemption

CBDT vide notification No. 97 of 2023 provided income tax exemption under Section 10(46) to Punjab Infrastructure Regulatory Authority. The exemption was

provided for the specified incomes only, provided that it shall not be engaged in any commercial activity and the nature of the specified income shall remain unchanged throughout the financial years.

CBDT revised definition of 'intra-group loan' and outlines its 'Safe Harbour' conditions under Rule 10TD

CBDT made amendments to Rule 10TA and Rule 10TD, as part of the Safe Harbour Rules for International Transactions. In Rule 10TA, significant changes include the revision of the definition of "intra-group loan" to exclude loans advanced by financial companies or enterprises engaged in lending or borrowing as part



of their normal business activities. Amendments in operating expenses and operating revenue clauses, refine the treatment of losses and income on the transfer of assets or investments. In Rule 10TD, the CBDT had omitted the term 'CRISIL' from specific clauses and introduced a new explanation defining 'reference rate' and 'credit rating'.

Net Direct Collections and Advance Tax Collections for FY 2023-24 increases by more than 20.66% and 19.94% respectively

The provisional figures of Direct Tax collections for the Financial Year 2023-24 (as on 17.12.2023) show that net collections are at Rs. 13,70,388 crores, compared to Rs. 11,35,754 crores in the corresponding period of the FY 2022-23, representing an increase of 20.66%.

Provisional figures of total Advance Tax collections for FY 2023-24 (as on 17.12.2023) was Rs.6,25,249 crores, against Advance Tax collections of Rs. 5,21,302 crores for the corresponding period of the immediately preceding Financial Year (i.e. FY 2022-23), showing a growth of 19.94%. The Advance Tax collection of Rs. 6,25,249 crore comprises Corporation Tax (CIT) at Rs. 4,81,840 crore and Personal Income Tax (PIT) at Rs. 1,43,404 crores.



Indian/Global Updates

Kuwait joins OECD/G20 BEPS Inclusive Framework, commits participation in Two-Pillar Solution

Kuwait had become a member of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), aligning itself with global initiatives to combat tax avoidance. As a participant in the Inclusive Framework, Kuwait has pledged to address tax challenges stemming from digitalization by actively engaging in the Two-Pillar Solution. This commitment aims to reform international taxation rules, ensuring that multinational enterprises contribute their fair share of taxes across operational jurisdictions. Kuwait will also play a role in implementing the BEPS package, consisting of 15 measures designed to combat tax avoidance, enhance the consistency of international tax regulations, and promote a more transparent tax environment.

Fiji joins OECD Global Forum for Tax Transparency & Information Exchange as 169th member

Fiji had recently become the 169th member of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum). This marks the fourth country to join the Global Forum in 2023, following Angola in March, Zimbabwe in April, and Sierra Leone in May. As a member, Fiji will actively participate in the decision-making processes of the Global Forum, standing on equal footing with other members. Fiji is dedicated to combating offshore tax evasion and has committed to implementing internationally agreed standards of exchange of information on request and automatic exchange of financial account information. Fiji is already engaged in the Pacific Initiative, a collaborative program launched in October 2020 by the Asian Development Bank, the Global Forum, the OECD. The initiative focuses on the gradual implementation of international tax transparency standards, capacity development, and the enhancement of domestic resource in the Pacific region.



Transfer Pricing / B E P S



US Tax Court rules out Brazilian legal restriction in determining ALP for intangibles in Coca-Cola's case

The US Tax Court recently issued a memorandum opinion addressing the validity of the blocked income regulation concerning Brazilian legal restrictions in a case involving The Coca-Cola Company & Subsidiaries (TCCC). The Internal Revenue Service (IRS) examined TCCC's consolidated federal income tax returns, making adjustments exceeding \$9 billion and determining tax deficiencies over \$3.3 billion. TCCC used the 10-50-50 method to calculate royalty obligations for its affiliates (supply points) manufacturing concentrates. The Brazilian supply point compensated TCCC with dividends, equivalent to the calculated royalty, arguing that Brazilian law restricted royalty payments. The court upheld a net transfer pricing adjustment of \$882 million, considering Brazilian law's cap on royalties. However, it rejected TCCC's

claim that the blocked income regulation didn't apply to payments to unrelated parties, emphasizing that the regulation's conditions were not satisfied. The court also dismissed arguments about the regulation's effective date provision.



Issue of the month



Overview of the UAE Transfer Pricing Rules

Introduction

In 2023, the United Arab Emirates (UAE) has emerged as the primary export market for nearly 1500 American companies, and continues fostering business relationships with dynamic economies worldwide. This economic scenario made the introduction of Transfer Pricing Rules in the economy of UAE, a crucial aspect to ensure that the prices of international transactions are not influenced by the relationship between the parties so involved.

Background

Through the Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (Corporate Tax Law), the President of UAE, Sheikh Mohamed bin Zayed Al Nahyan, introduced the Transfer Pricing Rules in "Chapter Ten-Transactions with Related Parties and Connected Persons" of the Decree-law. This enactment was issued on October 03, 2022 and came into effect on June 01, 2023.

Contents of Decree-Law

The Federal Decree-Law includes 3 pivotal articles namely, Article 34: *Arm's Length Principle*, Article 35: *Related Parties and Control* and Article 36: *Payments to Connected Persons*, highlighting various definitions & legal requirements for the corporates to abide regarding the transfer pricing law. Additionally, the decree-law also highlights the requirement of *Transfer Pricing Documentation* in its Article 55.

Brief Overview of Articles

Article 34: "Arm's Length Principle"

The aforementioned article of the Decree-Law includes the following subject matters in its scope:

- Condition of meeting the Arm's Length Price/Result ("**ALP**") criteria,
- Methods to be used in the computation of ALP of an international transaction,
- Terms of applying the methods or combination of methods for computation of ALP,



¹<https://www.trade.gov/knowledge-product/united-arab-emirates-market-overview>

-
- Power of authority to adjust taxable income, in case the result of transaction does not fall within the range of ALP, and
 - Primary adjustment and the power of authority relating to the same.

Article 35: "Related Parties and Control"

This article defines "Related Parties" and "Control", providing clarity on relationships that fall under the purview of transfer pricing regulations.

Article 36: "Payments to Connected Persons"

This article encompasses the definition of "Connected Persons", the conditions under which payments to the "Connected Persons" are considered to be deductible, and exemptions related to the applicability of this article.

Article 55: "Transfer Pricing Documentation"

This article sets out requirements for disclosure of related party transactions, the preparation of Local & Master files, the time period for submitting documentation, and the allowed response time for inquiries from tax authorities.

Categories of Transactions

The UAE transfer pricing rules are extensive and hence, applicable to a broad spectrum of transactions. These categories of transactions include: Goods, Services, Tangible Property, Capital Transactions, Intangible Property, Financing Arrangements, Intra-Group Services, Cost Contribution Agreements, Business Restructurings & Reorganizations and Transactions with connected persons.

Matters subject to clarification(s) of Tax Authorities

There are several areas of UAE transfer pricing rules that require clarifications from the UAE tax authorities because of their ambiguous nature. Some of the crucial aspects are highlighted below:

1. Guidelines regarding transfer pricing documentation & the contents of master file documentation.
2. Criteria for determining the transfer pricing adjustments within the arm's length range.
3. Clarification regarding mechanism for conducting transfer pricing and corresponding adjustments.
4. Specifications regarding selection of the type of data required for determining the ALP.
5. Rules on collection of supporting data in absence of any accessible financial data for comparable companies.

As these & such other matters are yet to be clarified by the tax authorities of UAE, it is recommended that businesses can rely on the OECD guidelines for guidance or in case of any ambiguity.

Conclusion

The UAE transfer pricing rules demonstrates a strong alliance with the OECD transfer pricing model and is anticipated to solidify even more as the tax authorities of UAE issue additional guidance & clarifications regarding certain ambiguous matters. This will further ensure the adherence to the arm's length principle and consistency of transfer pricing rules in the international transactions of UAE.

Legal Corner



**In the Income Tax Appellant Tribunal
Zydus Wellness Products Limited vs. Dy.
Commissioner of Income Tax**

Introduction and Brief Facts

Zydus Wellness Ltd (**"the Assessee"**) is a leading consumer wellness company, engaged in the production of nutrition and skincare products.

For FY 2015-16, the case of the Assessee was selected for scrutiny wherein a reference u/s 92CA of the Income Tax Act (**"the Act"**) was made by Assessing officer (**"AO"**) to Transfer Pricing Officer (**"TPO"**) for the determination of Arm length price. Thereafter, TPO passed an order u/s 92CA(3) of the Act, dated 31.10.2019 however it was digitally signed on 1.11.2019. Consequently, the AO passed its final assessment order on 30.06.2021. The Assessee filed an appeal against the AO order before ITAT stating that the TPO's order was issued beyond the stipulated timeframe outlined in section 153, read with section 92CA(3) of the Act. Therefore, the subsequent final assessment order u/s 143(3) r.w.s 144B dated 30.06.2021 is also time barred.

Arguments of Assessee

The Id. Counsel of the Assessee challenged the validity of order u/s 92CA(3) of the Act by contending that the order was passed beyond the period of limitation specified u/s 153 of the Act.

In this regard, the counsel of the Assessee put emphasis on the provisions of section 92CA(3A) of the Act wherein it mandate that the order u/s 92CA(3) required to be made any time before 60 days prior to date on which period of limitation referred to in section 153 of the Act expires.

As per the provisions of section 153 of the Act, the period of limitation for completion of assessment for the relevant assessment year is 31.12.2019, therefore TPO was required to pass the order u/s 92CA(3) of the Act on or before 31.10.2019 i.e. before 60 days prior to 31.12.2019.



Since the order passed by TPO u/s 92CA(3) dated 31.10.2019 is digitally signed on 01.11.2019, the order u/s 92CA(3) was time barred. Hence, the subsequent final order dated 30.06.2021 is also time barred.

To reinforce their contention, the counsel of the Assessee relied on several legal precedents such as Suman Jeet Agarwal vs. ITO, Pfizer Healthcare India (P.) Ltd. vs. JCIT, Transporter Industry International GmbH vs. DCIT(IT), and LG Soft India Private Limited vs. DCIT.

Arguments of Revenue

The Department representative (DR), defended the validity of the order under section 92CA(3) by stating that the order u/s 92CA(3) of the Act was passed within the period of limitation on 31.12.2019. Further, DR stated the order u/s 92CA(3) was digitally signed by TPO on 01.11.2019, due to technical issues

Hon'ble ITAT Order

The Hon'ble ITAT, upon thorough examination of Section 282A in conjunction with Rule 127A and Board Instruction No. 1/2018, stated that the date of order is the date on which the competent authority signed the order and not the date mentioned in the title of the order.

The Hon'ble ITAT followed the ruling of Madras High Court, in the case of Pfizer Healthcare India (P) Ltd, where the Hon'ble court explained in detail, the manner of computation of limitation for passing order u/s 92CA(3).

Furthermore, the Hon'ble ITAT also followed ruling in the case of DCIT(TP) vs Saint Gobain 444 ITR 636 (Mad) and Transport industry international GmbH (supra) where order passed by TPO beyond limitation period prescribed under the act was considered bad in law.

In view of the above, the Hon'ble ITAT held that in absence of a valid order under section 92CA(3), the extended period of limitation for issuing the assessment order under section 153(4) would not be available to the AO. Consequently, the final assessment order dated 30.06.2021 was also time barred.

Conclusion

The ITAT upheld the notion that the official order date is determined by the digital signature of the competent authority. Consequently, as the TPO's order exceeded the stipulated timeframe, the final assessment order was deemed time barred.

Glossary



Act	Income Tax Act, 1961
A.Y.	Assessment Year
AE	Associated Enterprises
ALP	Arm's Length Price
AO	Assessing Officer
AEOI	Automatic Exchange of Financial Account Information
BEPS	Base Erosion and Profit Shifting
CBDT	Central Board of Direct Taxes
EOIR	Information on Request
TDS	Tax Deducted at Source
IFSC	International Financial Services Centres
ITO	Income Tax Office
IGF	Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development
TP	Transfer Pricing
TPO	Transfer Pricing officer
TCCC	The Coca Cola Company
DCIT	Deputy Commissioner of Income Tax
IRS	Internal Revenue Service

GET IN TOUCH

Do write us back your Feedback/Queries/Comments, if any at taxhelpdesk@llca.net

DELHI

A-16/9 & A-16/4, Vasant Vihar, New Delhi – 110 057.

+91-11-42591800, 42591818

delhi@llca.net

www.llca.net

DISCLAIMER

This Newsletter offers non-binding information and is intended for general information purposes only. It is not intended as legal, tax or business administration advice and cannot be relied upon as individual advice. When compiling this Newsletter and the information included herein, Luthra & Luthra, LLP Chartered Accountants made every endeavor to observe due diligence as best as possible. Nevertheless, Luthra & Luthra, LLP Chartered Accountants cannot be held liable for the correctness, up-to-date content or completeness of the presented information. While every care has been taken in the preparation of this note to ensure its accuracy, Luthra & Luthra, LLP Chartered Accountants assumes no responsibility for any errors which may be found herein. Neither this alert nor the information contained herein constitutes a contract or will form the basis of a contract. The material contained in this document does not constitute / substitute professional advice that may be required before acting on any matter.

The information included herein does not relate to any specific case of an individual or a legal entity. It is therefore advised that professional advice on individual cases is always sought. Luthra & Luthra, LLP Chartered Accountants assumes no responsibility for decisions made by the reader based on this Newsletter.

