



LUTHRA & LUTHRA LLP

CHARTERED ACCOUNTANTS

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Highlights



- CBDT notified "APC & Secretary to Government, Agriculture & Co-operation Department, Government of Telangana." for the purpose of sharing taxpayers' information
- CBDT specified certain Forms to be furnished electronically under Rule 131
- CBDT directs PCIT under Sec.10 of Direct Tax Vivad se Vishwas Act, 2020 (DTVSV) accepting delayed payment of taxes
- Malta announced 7.5% flat tax rate for income from sports activities
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News Highlights



CBDT notified "APC & Secretary to Government, Agriculture & Co-operation Department, Government of Telangana." for the purpose of sharing taxpayers' information

CBDT notified in the Official Gazette of India, the "Agriculture Production Commissioner (APC) & Secretary to Government, Agriculture & Co-operation Department, Government of Telangana" as an authority for the purpose of sharing taxpayers' information u/s 138(1)(a)(ii) of the Income Tax Act, 1961 ("the Act").

CBDT specified certain Forms to be furnished electronically under Rule 131

Director General of Income Tax (Systems), with the approval of the CBDT vide Notification No.01/2024-25 specified that Forms No. 3CN, 3CS, 3CEC, 3CEFB, 59 and 59A are now to be furnished electronically and further to be verified in the manner prescribed under sub-rule (1) of Rule 131 of the Income Tax Rules, 1962

("the Rules"). The notification shall come into force from June 27, 2024.

CBDT directs PCIT under Sec.10 of Direct Tax Vivad se Vishwas Act, 2020 (DTVSV) accepting delayed payment of taxes

CBDT vide order no. F.No.173/03/2021-ITA-I(Pl2), directed the PCIT to accept the delayed payment of taxes in the cases fulfilling certain conditions mentioned in the order and further provides that the concerned PCIT shall issue modified Form-3 manually, if needed and allow the assessee to file Form-4 manually and thereafter issue Form-5 manually after examining the conditions as per the DTVSV Act. This entire process shall be completed by September 30, 2024.



Indian/Global Updates



Malta announced 7.5% flat tax rate for income from sports activities

Malta had introduced the Income from Sports Activities Rules, 2024, effective from the 2025 assessment year, through Legal Notice No. 147 of 2024. These rules set a flat tax rate of 7.5% on gross income earned from sports-related employment, which is final with no provisions for set-offs or refunds. The tax applies to various roles including registered players, licensed coaches, match officials, analysts, team managers, sports administrators, team doctors, and physiotherapists. Alternatively, these individuals can choose to be taxed under the standard individual income tax rules.



Transfer Pricing / B E P S



Canada implemented Digital Service Tax & Global Minimum Tax

On June 20, 2024, Canada's Department of Finance announced the royal assent of Bill C-59 and Bill C-69, which are part of the Fall Economic Statement Implementation Act, 2023, and the Budget Implementation Act, 2024. These measures aim to enhance affordability, expand housing availability, and ensure equitable economic growth. Bill C-69 introduces a 15% global minimum tax for multinational enterprise groups starting December 31, 2023. Key provisions of

Bill C-59 include a 3% digital services tax, enforcement of hybrid mismatch rules, denial of certain dividend deductions for Canadian financial institutions.



Issue of the month



“Exchange of Information” clause in DTAA: A Concise Evaluation

Introduction

In an increasingly globalized economy, where businesses and individuals often operate across multiple jurisdictions, the issue of double taxation can significantly hinder economic activities. Double Taxation Avoidance Agreements (“**DTAA**”) are treaties between two or more countries designed to prevent the same income from being taxed by multiple jurisdictions. A crucial component of these agreements is the exchange of information (“**EOI**”) between the tax authorities of the signatory countries. The EOI mechanism is vital for maintaining tax compliance and combating tax evasion and avoidance on a global scale.

What is EOI?

Exchange of tax and financial information or EOI refers to a process whereby two or more countries engage in sharing information related to the legal entities and citizens of the respective countries, available within their own jurisdiction, with the respective government authorities of those individuals and entities

Brief History of EOI

American and French authorities seeking information from Switzerland in 1945 could be considered as one of the earliest instance of seeking financial information for tax purposes. International trade growth, post World War II, led to more complex international taxation. Early frameworks to address tax issues included the UN model, published in 1980 as the ‘United Nations Model Double Taxation Convention’. The OECD model, originating in 1955 and subsequently revised in later years, has also been influential, especially after the 1998 report “Harmful Tax Competition. Article 26 of the current OECD model covers exchange of information. Today, most bilateral tax agreements are based on these two models

Types of EOI

The OECD Model Convention on Income and Capital (“**OECD Model**”) suggests the following types of EOI which may also be combined



1. **Information upon Request:** A jurisdiction which requires the information, requests another jurisdiction for the desired information. Such a request requires providing specific details regarding the individual or entity concerned, such as the name of the account holder, account number, bank or branch name, etc.

2. **Spontaneous Exchange of Information:** A jurisdiction may share some financial information with another country, if and when the former finds information within its jurisdiction deemed relevant for the latter, and there is a legal basis to do so. The effectiveness of this form of EOI depends upon ability of tax inspector to identify information that may be relevant to foreign tax administration

3. **Automatic Exchange of Information:** Under this arrangement, jurisdictions exchange financial information automatically at regular intervals. It usually contains details such as interest, dividend, royalty, pensions etc. To improve the efficiency of automatic EOI, OECD has designed standard paper format and standard electronic format known as OECD standard magnetic format. It has also designed a "new generation transmission format known as standard transmission format.

What does OECD say?

Confidentiality

Paragraph 2 of Article 26 of the OECD Model lays down restrictions on EOI. It provides that any information received by a contracting state shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment, collection, enforcement, prosecution or the determination of appeals in relation to taxes.

Such persons or authorities shall use the information only for such purposes but they may disclose the information in public court proceedings or in judicial decisions.

Limitations to EOI

Article 26, Paragraph 3 of OECD Model outlines limitations to the obligation of a Contracting State to provide information to another Contracting State. These limitations include:

1. **Internal Laws and Practices:** A State is not required to provide information beyond what its own laws and administrative practices allow.

2. Administrative Measures: A State does not need to perform administrative actions that are not allowed under the requesting State's laws or usual practices.

3. Reciprocity: A State may refuse a request if the requesting State cannot reciprocate due to legal or administrative constraints. For example, if one country provides certain information or benefits to another, the receiving country is expected to reciprocate by providing similar information or benefits in return.

4. Confidential Communications: Information protected by attorney-client privilege under domestic law does not need to be disclosed.

Obligations to provide EOI in certain cases

The OECD Model requires countries to share tax information with each other, even if the requested information is not needed for the requesting country's own tax purposes. Countries must use their usual methods to gather this information, even if it's only for the other country.

There are some limitations, but a country cannot refuse to provide information just because its own laws only require sharing information for its own tax purposes.

Declining Information

Article 26 of the OECD Model requires countries to provide information to treaty partners, even if it is held

by banks or financial institutions. It ensures that countries cannot refuse to supply information just because it is held by agents, fiduciaries, or relates to ownership interests in entities like companies or foundations. Information cannot be withheld solely because it is considered a trade secret under domestic laws. Refusals must be based on reasons unrelated to the entity's status or the nature of the information.

In the cases where no DTAA has been signed

The EOI clause is observed to be embedded in the DTAAs between 2 contracting states in accordance to which the exchange of the taxpayers' information takes place between these contracting nations.

However, in the cases where no DTAA has been entered between 2 nations, a separate agreement, namely "*Tax Information Exchange Agreement*" ("**TIEA**"), is signed through which exchange of information takes place.

The purpose of TIEA is to promote international co-operation in tax matters through exchanging information. The TIEA aims to establish a legal framework for mutual EOI relating to taxes, but they do not cover the allocation of taxing rights. They are intended to ease the way and to compliment the DTAA.

Conclusion

The Exchange of Information plays a vital role in promoting transparency and combating tax evasion. By ensuring that countries can share relevant tax information, the clause helps uphold the fairness and effectiveness of global tax systems. However, successful implementation requires addressing various challenges. As international cooperation continues to evolve, the EOI remains a cornerstone of efforts to create a fair and equitable tax environment worldwide.

Legal Corner



In the Income Tax Appellant Tribunal

D Light Energy (P) Ltd. vs. Assessing Officer, National Faceless Assessment Centre

Introduction and Brief Facts

D Light Energy (P) Ltd. (**"the Assessee"**) is engaged in the business of reselling of solar goods under which it purchases solar products like solar lanterns, solar power lights, etc. from its Associated Enterprise (**"AE"**) for the purpose of resale in India.

For the Assessment Year (**"AY"**) 2017-18, an assessment u/s 143(3) of the Income Tax Act, 1961 (**"the Act"**) was completed for the Assessee and an assessment order was served on the Assessee after referring the case to the Transfer Pricing Officer (**"TPO"**).

It was observed that the TPO had made an adjustment of INR 10,61,47,428 on account of international transactions of Purchase of solar goods, Reimbursement of Expenses and Warranty cost claims by clubbing these transactions and further applying Transactional Net Margin Method (**"TNMM"**) for benchmarking these transactions whereas the

Assessee benchmarked these two transactions separately by applying Resale Price Method (**"RPM"**) and Other Method, respectively.

Dissatisfied by the assessment order, the Assessee raised an objection before the Dispute Resolution Panel (**"DRP"**). However, DRP upheld TPO's view of applying TNMM as the Most appropriate Method (**"MAM"**) for benchmarking these clubbed transactions and also included two more companies in the list of comparables i.e. Avery Dennison India (P) Ltd. and Cummins India Ltd.

Subsequently, aggrieved by the directions of the DRP, the Assessee filed an appeal before the Honourable (**"Hon'ble"**) Income Tax Appellate Tribunal (**"ITAT"**).



Arguments of the Revenue

The Learned (“**Ld.**”) Department Representative (“**DR**”) submitted that the transactions of Reimbursement of Expenses and Warranty claims are inextricably linked to the procurement of solar goods by the Assessee from its AE and hence clubbing these transactions was moreover logical.

Further, as far as the MAM is concerned, the DR defended its view of applying TNMM and rejecting RPM by contending that although the Assessee had claimed that it has not made any value addition in the goods for reselling, still the entire responsibility for developing market strategy including advertising, marketing etc. lies with the Assessee only (according to the functions performed reported in the Transfer Pricing (“**TP**”) study of the Assessee).

Furthermore, the DR submitted that the Product liability and the Warranty risk are borne by the Assessee and the AE only takes care of the manufacturing defects.

In other words, the rendering of services after sales is value addition made by the Assessee.

In addition, the DR also asserted that the Assessee has been paying huge costs towards payments to contractors, professional technical services and commission / brokerage. The quantum of expenditure under these heads clearly indicate that the Assessee was undertaking some value addition activity after purchase of goods from the AE.

Arguments of Assessee

The Ld. counsel of the Assessee submitted that the sole reason to reject RPM was that the Reimbursement of Expenses and Warranty claims are to be clubbed with the transaction of Purchase of solar goods.

Further, these warranty claims where the goods are replaced on account of manufacturing defect was taken care of by the AE as the warranty against manufacturing defects was given by the AE.

Furthermore, the Ld. counsel stated that the Assessee was merely a pass-through entity to sell its product to Indian end customers which indicates that there has been no value addition in the goods that were being resold and hence RPM was the most appropriate method to benchmark the transactions of Purchase of solar goods. In respect of the same, reliance was placed on the decisions of *PCIT vs. Fujitsu India (P) Ltd.* and *Karcher Cleaning Systems P Ltd vs. Addl. CIT²*, wherein it was held that where product is resold without any value addition, RPM is the most appropriate method for benchmarking.

The Ld. counsel also submitted that the new comparable companies added in accordance with the DRP’s directions were not correct on account of functional disparity as Avery Dennison India (P) Ltd. is engaged in manufacturing segment and Cummins India Ltd. is providing after sales services also if RPM is held to be the most appropriate method, the ground raised in appeal assailing selection of these new comparables would become academic.

¹156 taxmann.com 310 (DEL)

²156 taxmann.com 623 (Del Trib)

In addition, as far as the volume of expenditure over payments to contractors, professional technical services and commission / brokerage is in question, the Ld. counsel of the Assessee tackled the view of DR and contended that the business activities of the Assessee are only confined to reselling of solar goods purchased from AE to rural and far flung areas where there is scarcity of electricity creating the need for the Assessee to spend substantial cost on marketing and transportation of these solar products.

Hon'ble ITAT's Order

After considering all the facts of the case and carefully examining all the submissions, the Hon'ble ITAT ruled that the international transaction of Purchase of solar products was to the tune of INR 136.63 crores whereas the total cost of Warranty claims and Reimbursement of Expenses was only INR 1.9 crores.

Hence, the Warranty claims and Reimbursement of Expenses are minuscule part of the total purchase transaction. The cost of warranty claims is merely little over 1.5% of purchase cost of solar products from AE and apart from the objection regarding volume of these transactions, no other reason has been given by the revenue to replace RPM with TNMM.

So, except from the above, the revenue did not place any other documentary evidence(s) to substantiate that the Assessee was undertaking any such activity which resulted in the value addition. Therefore, placing reliance on the decisions in case of *PCIT vs.*

*Fujitsu India (P) Ltd. and PCIT vs. Matrix Cellular International Services (P.) Ltd.*³, ITAT allowed the application of RPM for benchmarking the purchase transaction and also stated that even if the transaction of Warranty claims and Reimbursement of Expenses is aggregated with the transaction of Purchase of solar goods, it would not impact the method of bench marking as the former transactions are far smaller in value as compared to the later transaction.

Comment

From years, it has been commonly accepted to consider and apply RPM as the most appropriate method for benchmarking the transactions of resale of goods undertaken by distributors where such goods are resold without any or a little value addition. This principle has withstood the test of time and has been observed to be supported in various rulings.

The rationale behind this principle is that an appropriate resale price margin is easiest to determine where the reseller does not add substantially to the value of the product whereas in a situation where there has been a substantial addition in the value of product/-service before resale, it may be more difficult to arrive at the Arm's Length Price ("**ALP**") of such transaction using RPM. This is because, before resale, the processing of the product converts it into a more complicated version and as a consequence of which the product loses its identity or is completely transformed.

³90 taxmann.com 54 (Del)

Glossary



Act	Income Tax Act, 1961
A.Y.	Assessment Year
AE	Associated Enterprises
ALP	Arm's Length Price
AO	Assessing Officer
APA	Advance Pricing Agreement
BEPS	Base Erosion and Profit Shifting
CSP	Captive Service Providers
CBDT	Central Board of Direct Taxes
CIT(A)	Commissioner of Income Tax (Appeals)
DRP	Dispute Resolution Panel
DGIT	Directorate General of Income Tax
DST	Digital Service Tax
EOI	Exchange of Information
FA	Finance Act
FTS	Fee for Technical Services
GMT	Global Minimum Tax
HC	High Court
ITAT	Income Tax Appellant Tribunal
IRD	Interest Rate Differential Method
ITO	Income Tax Office
JCIT	Joint Commissioner of Income Tax
MNEs	Multi-National Enterprises
MAM	Most Appropriate Method
NR	Non-Resident
OECD	Organisation for Economic Cooperation and Development

Glossary



PCCIT	Principal Chief Commissioner of Income Tax
PE	Permanent Establishment
RPM	Resale Price Method
SC	Supreme Court
SDT	Specified Domestic Transactions
TDS	Tax Deducted at Source
TIEA	Tax Information Exchange Agreement
TP	Transfer Pricing
TNMM	Transaction net margin method
TPO	Transfer Pricing officer

GET IN TOUCH

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