

LUTHRA & LUTHRA LLP

CHARTERED ACCOUNTANTS



International Taxation

ISSUE OCTOBER 2024

Highlights



- ▶ CBDT extends due date for filing of ROI to Nov 15
- ▶ CBDT notified, RBI as exempt from requirement of tax collection at source u/s 206C(1F)
- ▶ CBDT condones delay in filing income returns for deductions u/s 80P for AY 2023-24
- ▶ CBDT extended tax audit due date by 7 days
- ▶ CBDT released direct tax related statistics
- ▶ OECD Publishes Model Competent Authority Agreement for Amount B of Pillar 1
- ▶ Romania is progressing in implementing the OECD Anti-Bribery Convention but needs to improve its foreign bribery legislation and detection, says the OECD Working Group on Bribery
- ▶ Diving into the concept of Specified Domestic Transaction
- ▶ Mavenir Systems Private Limited vs. Assessment Unit, Income Tax Department, National Faceless Assessment Centre

What's Inside



NEWS HIGHLIGHTS

1



INDIAN GLOBAL UPDATES

3



TRANSFER PRICING/BEPS

4



ISSUE OF THE MONTH

5



LEGAL CORNER

8



GLOSSARY OF TERMS

12

News Highlights



CBDT extended due date for filing of ROI to Nov 15

CBDT extended the due date of furnishing of Return of Income (ROI) under section 139(1), for the Assessment Year 2024-25, from 31st October, 2024 to 15th November, 2024.

CBDT notified, RBI as exempt from requirement of tax collection at source u/s 206C(1F)

CBDT, vide Notification No. 115/2024 dated Oct 16, 2024 notified that no collection of tax shall be made under Section 206C(1F) on any payment received from the Reserve Bank of India (RBI). The notification shall be effective from Oct 16, 2024.

CBDT condoned delay in filing income returns for deductions u/s 80P for AY 2023-24

CBDT has received applications from co-operative societies claiming deduction under Section 80P requesting condonation of delay in filing return of

income for the Assessment Year 2023-24 and allowing them to be treated as submitted on time due to delay in getting their accounts audited as per respective State Laws. In order to alleviate the hardships faced by the Assesseees, CBDT extends the applicability of *Circular No. 13/2023* to the Assessment Year 2023-24, in accordance with the conditions outlined in the circular.

CBDT extended tax audit due date by 7 days

CBDT extends tax audit due date by 7 days, to Oct. 7, in view of e-filing difficulties.



CBDT extended tax audit due date by 7 days

CBDT had released updated Time-Series data on Direct Tax collections and administration, highlighting significant growth from the fiscal year 2013-14 to 2023-24. Notably, net Direct Tax collections rose by 206.95%, reaching Rs. 19,60,166 crores, while gross collections surged by over 224.06%, totaling Rs. 23,38,421

crores. The Direct Tax to GDP ratio improved from 5.62% to 6.64%, and the cost of collection decreased from 0.57% to 0.44% of total collections. Additionally, the number of Income Tax Returns (ITRs) filed increased by 126.58%, from 3.80 crores in FY 2013-14 to 8.61 crores in FY 2023-24.



Indian/Global Updates



OECD Publishes Model Competent Authority Agreement for Amount B of Pillar 1

The OECD has released a Model Competent Authority Agreement (MCAA) to aid the implementation of Amount B under Pillar 1, aimed at simplifying tax processes. This tool is especially useful for jurisdictions with limited resources and data. It supports a political commitment from all Inclusive Framework members to minimize potential double taxation that may result from this simplified approach in jurisdictions with existing bilateral tax treaties.



Transfer Pricing / B E P S



Romania is progressing in implementing the OECD Anti-Bribery Convention but needs to improve its foreign bribery legislation and detection, says the OECD Working Group on Bribery

Romania, a recent signatory to the OECD Anti-Bribery Convention, has taken some initial steps toward addressing foreign bribery, but a new OECD report highlights the need for further action. The OECD Working Group on Bribery's Phase 2 evaluation recommends that Romania amend its foreign bribery laws to fully align with the Convention, increase sanctions for foreign bribery while ensuring that illicit proceeds can be confiscated, and improve mechanisms for detecting and reporting such cases. The report also calls for strengthening the whistleblowing

framework, exploring non-trial resolutions to encourage reporting, and raising awareness of the importance of ethics and compliance programs. Additionally, it stresses the need to ensure the National Anti-Corruption Directorate has sufficient resources and remains protected from political interference. Romania has already taken some positive steps, including its first foreign bribery prosecution and the introduction of a draft law to address these concerns. The country is expected to report back to the Working Group by October 2026 on its progress in implementing these recommendations and enhancing its enforcement efforts.



Issue of the month



Issue of the Month

Diving into the concept of Specified Domestic Transaction

Background

Transaction between related parties have always been looked at by the Income-tax Department with an arched eyebrow. The Income-tax Act (**"the Act"**) contains various provisions, which govern the transaction between related parties. Indian Transfer Pricing (hereinafter **"TP"**) regulations as introduced in the year 2001 until the F.Y. 2011-2012 were only covering 'International Transaction undertaken between two or more 'Associated Enterprise within its fold. However, triggered by the suggestions made by the Hon'ble Supreme Court in CIT v. Glaxo Smithkline Asia (P) Ltd., Government of India vide the Finance Act, 2012 extended the purview of these regulations covering specified class of domestic transactions entered into between Associated Enterprises with effect from A.Y. 2013-2014.

Objective behind introduction of domestic transfer pricing regulation.

The introduction of new domestic transfer pricing regulations, as outlined in the Finance Bill 2012, aims to provide objectivity in determining income and assessing the reasonableness of expenditures in transactions between related domestic parties. It also imposes a legally enforceable obligation on taxpayers to maintain proper documentation. However, these regulations apply only to certain transactions, specifically those that fall under, Chapter VI-A, and Section 10AA of the Income Tax Act. For example, transactions like the sale of capital assets between related parties are not covered



The Hon'ble Supreme Court recommended amending certain provisions of the Income Tax Act to empower the Assessing Officer to adjust the income declared by the taxpayer based on the fair market value of transactions between related parties. This adjustment would use methods such as those outlined in Transfer Pricing Regulations. The Hon'ble court noted that the Assessing Officer often faces challenges due to the lack of required documentation from taxpayers, as there is no obligation for them to maintain specific records for domestic transactions between related parties.

To address this, the Court suggested considering a legal amendment that would require taxpayers to maintain books and documents as per the rules under section 10D of the Income-tax Rules and obtain an audit report from their Chartered Accountant to ensure proper documentation of transactions at arm's length. Although the Hon'ble court generally refrains from making recommendations, it emphasized the need for the Ministry of Finance to consider these amendments promptly.

Transactions considered as specified domestic transactions u/s 92BA

Section 92BA of the Act provides specifically the transactions which are to be considered as specified domestic transactions, not being an international transaction and hence, which shall be covered under the purview of TP regulations if the aggregate value of such transaction exceeds a sum of INR 20 crore. These prescribed transactions are as follows:

1. Any transaction referred to in section 80A of the Act

Sub-section (6) of 80A deals with various deduction allowable in computing the total taxable income. It deals with the TP of goods/services between undertaking/unit/enterprise/eligible business and other business of the taxpayer.

Further, sub-section (6) of section 80A states that when goods or services are transferred between undertaking/unit/enterprise /eligible business to any other business of the taxpayer or/and vice versa, and the recorded consideration for the transfer does not match the market value, the profits and gains for deductions will be calculated based on the market value of the goods or services at the time of transfer.

2. Any transfer of goods or services referred to in sub-section (8) of section 80-IA

Sub-section (8) of section 80-IA provides that if goods or services are transferred between an eligible business and another business owned by the same individual or/and vice versa, and the recorded transfer price differs from the market value, the eligible business's profits must be calculated as if the transfer occurred at market value.

However, where, in the opinion of the Assessing Officer ("AO"), the computation of the profits and gains of the eligible business in the manner hereinbefore specified presents exceptional difficulties, the AO may compute such profits and gains on such reasonable basis as he may deem fit.

3. Any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-IA

Sub-section (10) of section 80-IA provides that where it appears to the AO that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the AO shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom

In other words, if the AO determines that a close connection between the eligible business and another party has resulted in profits exceeding what is normally expected, they will adjust the profit calculations for the eligible business to reflect a more reasonable amount for the purposes of deductions.

4. Any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable

The above transaction basically covers all the transactions of nature discussed in points 3 and 4 above where the assessee is undertaking eligible business subject to deduction under Chapter VI-A or section 10AA of the Act.

5. any business transacted between the persons referred to in sub-section (6) of section 115BAB

This specified transaction is in relation to the manufacturing entities recently established and claiming the benefit of 15% tax rate. The said provisions are similar to point 4 as discussed above and shall apply if the transactions have been undertaken with person having close connection and resulting in more than ordinary profits.

6. Any business transacted between the assessee and other person as referred to in sub-section (4) of section 115BAE

This is a new insertion under Section 92BA by Finance Act 2023 w.e.f. 01-04-2024, pertaining to the recently established manufacturing co-operative societies that are claiming the benefit of a 15% tax rate. These provisions are similar to Clause IV discussed earlier and will apply if transactions occur with closely connected parties, resulting in profits that exceed the ordinary level.

Compliance – Filing form 3CEB

A taxpayer undertaking specified domestic transactions is required to furnish Accountant's report in Form 3CEB and is also required to keep and maintain prescribed documentation u/s 92D.

Failure to file form 3CEB, failure to maintaining required information or document attracts similar penalties as regarding international transactions

Conclusion

The introduction of Specified Domestic Transactions in the transfer pricing regulations marks a significant evolution in the treatment of domestic inter-company transactions. With the aim of ensuring fairness and transparency, the provisions outlined under Section 92BA address various scenarios that can arise when associated enterprises engage in business with one another. By requiring that transactions align with market values, the regulations seek to prevent tax avoidance and ensure that profits are reported accurately.

Legal Corner



Before the Honourable High Court of Karnataka

Mavenir Systems Private Limited vs. Assessment Unit, Income Tax Department, National Faceless Assessment Centre

Introduction and Brief Facts

Mavenir Systems Private Limited (**'the Assessee'**) is a private company engaged in the business of manufacture of television and radio receivers, sound or video recording or reproducing apparatus, and associated goods.

During the assessment proceedings, for the Assessment Year ('AY') 2020-21, the Assessee was served a Questionnaire notice by the Assessing Officer ('AO') to which the Assessee submitted reply in parts. Subsequent to the same, the AO served a show-cause notice to the Assessee for which the Assessee again submitted a detailed response.

Consequently, a draft assessment order (**'draft order'**) was passed by the AO. The Assessee being aggrieved by the aforesaid draft order, filed its objections with the Dispute Resolution Panel (**'DRP'**). Further, the DRP issued its directions vide an order dated 07.06.2024.

Aggrieved by the directions of the DRP, the Assessee filed a rectification application and also addressed a communication to the AO regarding the filing of the aforementioned application. The Assessee also requested the AO for not proceeding with the finalization of the assessment proceedings, i.e. passing of the final assessment order. (**'final order'**), until the rectification application was disposed.

However, despite the pendency of the rectification application, the AO proceeded to pass the final order. The Assessee being aggrieved by the aforesaid final order, passed a writ petition before the Honourable High Court (**'Hon'ble HC'**) of Karnataka.

Arguments of the Assessee

The Learned (**'Ld.'**) counsel of the Assessee contended that the passing of the final order despite the pendency of rectification application, was illegal and an arbitrary exercise of power.



Further, the counsel also contended that the serving of the aforesaid final order was in violation of the principle of natural justice and consequently, the demand noticed & the penalty notices deserve to be quashed.

Arguments of the Revenue

The Ld. counsel of the Revenue submitted that there was no merit in the writ petition under consideration and hence, the same shall be liable to be dismissed.

Order of Hon'ble HC

After considering all the facts of the case and the submissions presented, the Hon'ble HC ruled in the favour of the Assessee and held that the events, noticed in the case under consideration, were sufficient to conclude that the Assessee had filed the rectification application, which was pending before the DRP and was subject matter of the final order.

Therefore, it was clear that AO ought to have waited till the disposal of the rectification application before serving the final order.

Consequently, the aforesaid final order and the relevant demand notices were quashed and the DRP was directed to dispose of the rectification application in accordance with the law after providing sufficient & reasonable opportunity of being heard to the Assessee.

Comment

Section 144C of the Act provides a time limit, of one month from the end of the month in which directions by the DRP have been issued, to AO for passing the final order.

Further, Rule 13 of the Income Tax (DRP) Rules, 2009, provides for the rectification of any mistake / error in any direction issued by the DRP. Thus, a taxpayer may file an application for seeking rectification of the DRP directions. However, the rule does not provide any time limit for disposal of such applications.

The HC ruling laying down the principle that on an application being filed for rectification, AO needs to wait for disposal of such application by DRP, is likely to create practical challenges for the AO in passing the final order since DRP may not pass the rectification order within a period of one month (i.e. the period available with AO to pass final order).

must wait providing the interpretation in the absence. Consequently, this creates a lag in the process of finalization of an appeal and creates practical difficulties for the AO in passing of the final order.

Glossary



Act	Income Tax Act, 1961
A.Y.	Assessment Year
ALP	Arm's Length Price
AO	Assessing Officer
ITAT	Income tax Appellate Tribunal
UK	United Kingdom
BEPS	Base Erosion and Profit Shifting
PCIT	Principal Commissioner of Income Tax
CBDT	Central Board of Direct Taxes
CIT	Commissioner of Income Tax
US	United States
IT	Income Tax
ITR	Income Tax Return
TDS	Tax Deducted at Source
ITO	Income Tax Officer
OECD	Organisation for Economic Co-operation and Development
ITR	Income Tax Return
PAN	Permanent Account Number
ITBA	Income Tax Business Application
MNE	Multinational Enterprises
MCAA	Model Competent Authority Agreement
ROI	Return of Income
SLP	Special Leave Petition
SDT	Specified Domestic Transaction

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.

