BKR ASIA PACIFIC TAX UPDATE

OCTOBER 2017

Welcome the the first Asia Pacific Tax Update

Dear Members,

As part of the BKR International Asia Pacific Board's initiatives to increase the flow of information across our region and amongst member firms, the Tax Committee is proud to release our first E-Tax newsletter,

These newsletters will be published on a quarterly basis. We trust that you find this information useful in your practice and of course you are welcome to share these publications with your contacts if that will be of assistance to you in your firm's marketing efforts.

This E-Tax newsletter offers summaries of the latest changes to tax legislation in many of our regions across our diverse region. Thank you to the member firms that contributed to the writing of this newsletter. The Tax committee welcomes articles and ideas for future articles from all members. These can be emailed to a member of the tax committee (contact details at http://www.bkrasiapac.com/executive-director/tax-committee/) or to the Executive Office at grant.allsopp@bkrasiapac.com .

Thank you and we hope that you enjoy reading the newsletter.
Kind Regards,

Scott Arnold and Shane Browning
Co-Chairs
Tax Committee
BKR International Asia Pacific Region

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Corporate Income Tax

Operation of the foreign resident capital gains withholding system

Applicable to:

Non-resident taxpayers disposing of certain taxable Australian property and purchasers of certain taxable Australian property from non-resident taxpayers.

Background and update:

Under the current regime foreign residents disregard a capital gain or a capital loss from a CGT event unless the CGT event happens to an asset that is 'taxable Australian property'. This means that foreign residents may have an Australian CGT liability when they enter into transactions involving their 'taxable Australian property'. Foreign residents may also have an Australian income tax liability when they transact with these assets in circumstances that give rise to a profit which is subject to tax as ordinary income (rather than as a capital gain).
The measure is a collection mechanism to support the operation of the foreign resident CGT regime and does not alter a foreign resident's existing Australian tax obligation.

Effective 1 July 2016, where a foreign resident disposes of certain taxable Australian property, the purchaser is Volume Volume Volume - I | July 2017July 2017 July 2017July 2017 July 2017July 2017July 2017
required to withhold 10% of the purchase price and pay that amount to the Australian Taxation Office (ATO).
This withholding is limited to taxable Australian property, being:

- Real property in Australia – land, buildings, residential and commercial property;
- Lease premiums paid for the grant of a lease over real property in Australia;
- Mining, quarrying or prospecting rights;
- Interests in Australian entities whose majority assets consist of the above such property or interests – this is called an indirect interest; and
- Options or rights to acquire the above property or interest.
- However, there are a number of exclusions that will apply in the following circumstances:
- Real property transactions with a market value under $2 million (ensuring that the vast majority of residential house sales will be unaffected by this measure);
- Transactions listed on an approved stock exchange; and
- The foreign resident vendor is under external administration or in bankruptcy.

Author's Comments:

If a purchaser fails to withhold and pay this amount to the ATO, penalties and interest can apply. Accordingly, identifying whether a vendor is a non-resident will become a fundamental process in undertaking such a transaction. The Commissioner of Taxation may provide a clearance certificate which certifies that there is nothing to suggest that an individual or entity is or will be a foreign resident for a specified period. If such a certificate is provided, the purchaser is entitled to rely on the certificate and no withholding is required. It is noted that this certificate must be obtained by the purchaser prior to settlement.

Other practical issues that should be considered include:

- Including appropriate clauses within any sale contract so both parties are clear about their responsibilities (e.g. declarations regarding residency, the nature of the underlying assets and obtaining clearance certificates etc.);
- Implications of the rules to the issue of shares/units in a land rich company/trust or conversion of convertible instruments; and
- Considerations for contracts entered into before 1 July 2016 but become unconditional on or after 1 July 2016

Goods & Services Tax (GST)

New Australian law applying GST to imported digital products and services

Applicable to:
Software-as-a-service providers, media streaming providers, subscription based providers

Background and update:
Current legislation favour offshore suppliers. A software subscription service provided by a local supplier is liable for GST but a comparable software subscription service that is provided by an offshore supplier may not, creating a competitive advantage for overseas companies.

The Goods and Services Tax (GST) legislation has been extended to cross-border supplies of digital products and other services imported by Australian consumers. Under the new law, overseas suppliers will be required to pay GST on these sales from 1 July 2017. The new law will be applicable to digital products such as streaming or downloading of movies, music, apps, games, e-books as well as services such as architectural or legal services.

A transitional rule will apply to overseas suppliers that:

- meet the registration turnover threshold of AUD75,000; and
- supply digital products and services before 1 July 2017 and continue after this date. The portion after 1 July 2017 is liable for GST.

For example, if you supplied a 12-month subscription in September 2016, you may be required to pay GST on the portion of the sale for July and August 2017.

Author's Comments:
The GST rate in Australia is currently 10%, therefore 1/11th of the amount you charge for sales of digital products or services to Australian consumers will be the GST amount that you must pay to the ATO. Australian consumers are Australian residents who are not registered for Australian GST.

You need to take reasonable steps to obtain information or use information captured in your business systems to work out if your customer is an Australian resident. Obtaining an Australian Business Number (ABN) and a statement from your customer that they are GST registered will assist in working out that your Australian resident customer is not an Australian consumer.

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SINGAPORE UPDATES

Transfer Pricing

Country by Country Reporting (CbCR)

Applicable to:
Singapore Multinational Enterprises (MNEs) group with international operations and annual value revenue of at least S$1.125 million

Introduction:
Singapore will implement CbCR for a Multinational Enterprise (MNE) from Financial year (FY) beginning or after 1 January 2017.
CbCR will be required for a MNE group in relation to a financial year, where:

- The MNE group is a Singapore MNE group;
- The consolidated group revenue in the preceding financial year is at least S$1,125 million; and
- The MNE group has subsidiaries or operations in at least one foreign jurisdiction

Consolidated Revenue of the MNE refers to the revenue figure disclosed in the consolidated financial statements. Revenue of associated companies and joint ventures

Transfer Pricing

Country by Country Reporting (CbCR) contd.

accounted for under the equity method and partnerships that are not consolidated under applicable accounting rules will not form part of this figure.

Based on the identification of relevant jurisdictions in a CbC Report submitted by a Reporting Entity, the Comptroller will provide the CbC Report to the tax authorities of those jurisdictions if there is an agreement with the relevant tax authority for the automatic exchange of CbCR information.

Transfer Pricing Documentation:

IRAS' Transfer Pricing Guidelines require taxpayers to organise their transfer pricing documentation at Group level and Entity level.

CbC Reports are supplementary to such transfer pricing documentation.

A Cbc Report requires aggregate tax jurisdiction-wide information relating to the global allocation of the income, the taxes paid, and certain indicators of the location of economic activity among tax jurisdictions in which the reporting MNE group operates.

The report also requires a listing of all the entities (including permanent establishments) for which financial information is reported, including the tax jurisdiction of incorporation, where different from the tax jurisdiction of residence, as well as the nature of the main business activities carried out.

A CbC Report will be helpful for high-level transfer pricing risk assessment purposes.

It may also be used by tax authorities in evaluating other Base Erosion and Profit Shifting (BEPS) related risks and where appropriate for economic and statistical analysis. Information in the CbC Report should not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis. The information in the CbC Report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate.

The information should not be used by tax administrations to propose transfer pricing adjustments. IRAS will use the information contained in CbC reports in accordance with the permitted uses as set out by OECD Report.

The first CbC Reports will be required for data FY 2017 is

- Reporting Entity will have 12 months from the end of a financial year to submit the CbC Reports for that financial year.
- the earliest CbC Report required to be submitted to IRAS would be due by 31 December 2018 (for a financial year ending on 31 December 2017)

Penalties:

Late Filing or Failing to File CbC Report
Impose a fine up to $1,000. If the fine is not paid, the person responsible for the offence may be imprisoned for up to six months Impose a further fine of up to $50 for every day during which the offence continues after conviction

False/Misleading CbC Information

A fine of up to $10,000; and/or Person responsible for the offence may be imprisoned for up to two years.

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Indonesia Updates

Transfer Pricing

MASTER FILE

Ownership structure and chart as well as countries and jurisdictions of each group member

- A list of shareholders and the percentage of ownership and list of Board Director (BOD) for each member of the business group
- Chart illustrating the group's legal and ownership structure
- Geographical location (country and jurisdiction) of operating entities

Activities conducted by business group

- List of members of the business group and their business activities
- Important drivers of business profit
- A description of the supply chain for the group's five largest products and/or service offerings by turnover plus any other products and/or services amounting to more than 5 percent of group turnover. The required description could take the form of a chart or a diagram
- A list and brief description of important service arrangements between members of the group, other than research and development (R&D) services, including a description of the capabilities of the principal locations providing important services and transfer pricing policies for allocating services costs and determining prices to be paid for intra- group services.
- A description of the main geographic markets for the group's products and services
- A brief written functional analysis describing the principal contributions to value creation by individual entities within the group, i.e. key functions performed, important risks assumed, and important assets used.
- A description of important business restructuring transactions, acquisitions and divestitures occurring during the fiscal year.

Intangible property owned by business group

- A general description of the group's overall strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of R&D management.
- A list of intangibles or group of intangibles of the MNE group that are important for transfer pricing purposes and which entities legally own them
- List and explanation regarding parties in the business group which contribute to develop intangible property.
- A list of important agreements among identified associated enterprises related to intangibles, including cost contribution arrangements, principal research service agreements and license agreements.
- A general description of the group's transfer pricing policies related to R&D and intangibles.
- A general description of any important transfers of interests in intangibles among associated enterprises

Financial activities and fundings in the business group

- A general description of how the group is financed, including important financing agreements with unrelated lenders.
- The identification of any members of the MNE group that provide a central financing function for the group,

including the country under whose laws the entity is organised and the place of effective management of such entities.

- A general description of the group's general transfer pricing policies related to financing arrangements between associated enterprises.

Consolidated Financial Statement of the Parent Entity and tax information regarding Related Party Transactions

- The MNE's annual consolidated financial statement for the fiscal year concerned if otherwise prepared for financial reporting, regulatory, internal management, tax or other purposes.
- A list and brief description of the group's existing unilateral advance pricing agreements (APAs) and other tax rulings relating to the allocation of income among countries.

LOCAL FILE

Identity and business activities performed

- A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) and jurisdiction(s) in which such individuals maintain their principal offices.
- A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year.
- Operational aspects of Taxpayer's transactions.
- Detailed description of business environment, including key competitors.

Transfer Pricing contd.

Information about Related Party Transactions and independent transactions conducted by the taxpayers

- Transaction scheme and explanations.
- Pricing policies implemented for the last five years.
- A description of the material controlled transactions (e.g. procurement of manufacturing services, purchase of goods, provision of services, loans, financial, and performance guarantees, licenses of intangibles, etc.) and the context in which such transactions take place.
- The amount of intra-group payments and receipts for each category of controlled transactions involving the local entity (i.e. payments and receipts for products, services, royalties, interest, etc.) broken down by tax jurisdiction of the foreign payer or recipient.
- An identification of associated enterprises involved in each category or controlled transactions, and the relationship amongst them.
- A table contains information of VAT receipts, counterparts and their countries/jurisdictions, product specification and quantity, price per unit product, and date of sending/shipment (for commodity transactions)
- Copies of all material intercompany agreements concluded by the local entity.

The application of Arm's length Principle

- A detailed comparability and functional analysis of the taxpayer and relevant associated enterprises with respect to each documented category of controlled transactions, including any changes compared to prior years.
- Detailed description of business characteristics based on functional analysis of risk and asset.
- An indication of the most appropriate transfer pricing method with regard to the category of transaction and the reasons for selecting that method.
- An indication of which associated enterprise is selected as the tested party, if applicable, and an explanation of the reasons for this selection, and information on relevant financial indicators for independent enterprises relied on in the transfer pricing analysis in case Taxpayer using transfer pricing method on the basis of gross profit or net profit
- A summary of important assumptions used in applying the transfer pricing methodology.
- An explanation of the reasons for performing a multi-year analysis
- A list and description of selected comparable uncontrolled transactions (internal or external), if any, and information on relevant financial indicators for independent enterprises relied on in the transfer pricing analysis, including a description of the comparable search methodology and the source of such information.
- A summary of financial information used in applying the transfer pricing methodology including segmented financial statement in the case taxpayer has more than one business characteristics.
- Description of application transfer pricing method based on chosen comparables, arm's length profit and prices used as a base to determine transfer pricing.
- A description of any comparability adjustments performed, and an indication of whether adjustments have been made to the results of the tested party, the comparable uncontrolled transactions, or both.
- A description of the reasons for concluding that relevant transactions were priced on an arm's length basis based on the application of the selected transfer pricing method
- A copy of existing unilateral and bilateral/multilateral APAs and other tax rulings to which the local tax jurisdiction is not a party and which are related to controlled transactions described above.

The taxpayer's financial information

- Annual local entity financial accounts for the fiscal year concerned. If audited statements exist, they should be supplied and if not, existing unaudited statements should be supplied.
- Segmented financial statement based on each business characteristic in the case tax payers has more than one business characteristics.
- Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements.
- Summary schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.

Other information

Non - financial events / occasions / facts which effect price setting or profit level.

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International Taxation

Recent Changes in Indian Tax Treaties with Mauritius and Singapore

Recently India has amended provisions of Double Tax Avoidance Agreement ("DTAA") entered into by India with Singapore and Mauritius. The highlights of the changes in treaties are discussed hereunder:

Applicable to:

Companies having Inbound – Outbound Investment structure through Mauritius or Singapore

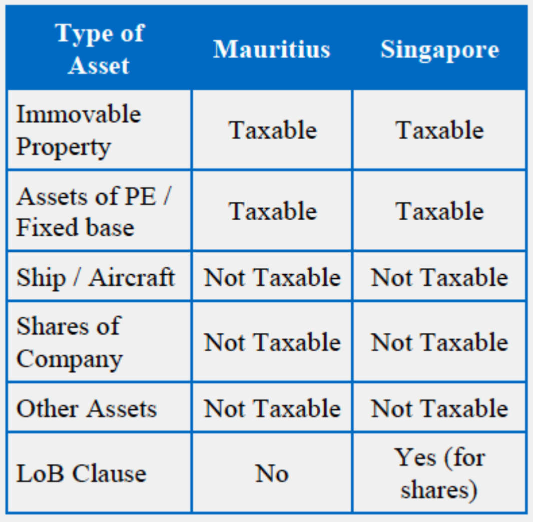
Background and Update:

Double Taxation Avoidance Agreements ("DTAA") between India – Mauritius and India – Singapore provided taxing rights in respect of capital gains arising on sale of shares to Residence state only.

Therefore, Mauritian and Singapore resident company having investment in shares of an Indian Company was not liable to tax in India in respect of capital gain arising on sale of shares of an Indian Company.

Further, capital gain arising on sale of share are not chargeable to tax as per the domestic laws of Mauritius and Singapore which leads to double non-taxation. As on September 2016, FDI investment in India through Mauritius and Singapore route accounts for approximately 49% of the total cumulative FDI investment in India.

Further, there was no Limitation of Benefits ("LoB") clause in DTAA with Mauritius and therefore it was misused for round tripping of investments and to avoid taxes in India which leads to treaty abuse. Following is the summary of existing Capital Gain taxability in Source State under DTAAs:



Type of Asset	Mauritius	Singapore
Immovable Property	Taxable	Taxable
Assets of PE / Fixed base	Taxable	Taxable
Ship / Aircraft	Not Taxable	Not Taxable
Shares of Company	Not Taxable	Not Taxable
Other Assets	Not Taxable	Not Taxable
LoB Clause	No	Yes (for shares)

India has now signed the Protocols for amendment of the Conventions for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains with Mauritius and Singapore.

Both the Protocols provide for source-based taxation of capital gains arising from alienation of shares acquired on or after 1st April 2017 in a company resident in India. Simultaneously, investments made before 1st April 2017 have been grandfathered and will not be subject to capital gains taxation in India. Where such capital gains arise during the transition period from 1st April 2017 to 31st March 2019, the tax rate will be limited to 50% of the domestic tax rate of India. Taxation in India at full domestic tax rate will take place from financial year 2019-20 onwards.

The benefit of 50% reduction in tax rate during the transition period shall be subject to the Limitation of Benefits Article, whereby a resident of Mauritius or Singapore (including a shell / conduit company) will not be entitled to benefit of 50% reduction in tax rate, if it fails the main purpose test and bonafide business test.

Other amendments to the DTAAs brought in by the Protocols signed by India.

DTAA between India – Mauritius

- Insertion of Article on Fees for Technical Services ("FTS") liable to be taxed at the rate not exceeding 10% on gross basis in source state. Currently, there is no separate article for FTS.
- Service PE is introduced in the definition of PE
- Introduction of source based taxation of "Other Income"
- Tax on Interest in source state capped at 7.5% which is currently taxed in source state as per domestic laws
- Withdrawal of exemption given to Banks in respect of Interest arising to banks and therefore now taxable @ 7.5%. However, debt claims existing prior to April 01, 2017 have been grandfathered.
- Scope of Article on Exchange of Information enhanced
- Insertion of new Article on Assistance in collection of Taxes

DTAA between India - Singapore

- Mechanism of corresponding tax adjustments introduced in transfer pricing cases to prevent economic

India Updates: International Taxation

Recent Changes in Indian Tax Treaties with Mauritius and Singapore

double taxation.

• Insertion of new article which states that this Agreement shall not prevent a Contracting State from applying its domestic law and measures concerning the prevention of tax avoidance or tax evasion. Therefore, domestic anti-avoidance rules given preferential treatment in DTAA between India - Singapore.

Author's Comment

India has signed the protocols to amend the DTAA with Mauritius and Singapore in view of following reasons.

- To stop treaty abuse and round trippingof investments
- To gain right to tax capital gains on saleof shares of Indian Company
- To comply with BEPS action plans
- To curb revenue loss and preventdouble non-taxation
- To stimulate flow of exchange ofinformation

Consequential effects:

- Grandfathering of existing investment from Indian Tax net
- Other securities continue to be taxed in Residence State
- Shares held by FIIs as stock in trade, not having PE, shall not be taxable inSource State
- Underlying Tax credit under Mauritius and Singapore tax treaties with India shall continue

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Corporate Income Tax

Residential Status of Foreign Company

Until FY 2015-16, a company incorporated outside India was considered as tax resident in India only if during the year under consideration, control and management of its affairs was "wholly" situated in India. Considering that the test was too liberal, Finance Act 2015 had amended the provisions of Section 6(3) of the Act relating to determination of residential status of Companies, which would be effective from Assessment Year ("AY") 2017-18 (FY 2016-17). As per the said amendment, a company is to be considered as resident if (i) it is an Indian Company or (ii) its place of effective management, during the year, is in India.

Place of Effective Management (PoEM) has been defined as a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made. With a view to provide more clarity, Central Board of Direct Taxes ("CBDT") has issued guiding principles for determination of PoEM.

Guiding Principles on determination of PoEM

The guiding principles clarify that determination of PoEM is a factual exercise and PoEM should be determined based on facts and circumstances considering the principle of 'substance over form'. For determination of PoEM, companies are broadly categorised into companies engaged in active business outside India and companies not engaged in active business outside India. The broad idea is that companies engaged in active business outside India should generally be considered as resident outside India and be subject to liberal tests, whereas companies not engaged in active business outside India should be subject to detailed examination and stringent tests for determination of their PoEM.

A company shall be considered as company engaged in active business outside India if based on average data for the previous year and two preceding years (or tax accounting years of the company ending in the respective previous years, if tax accounting years in its country of incorporation differ from April to March), its –

- Passive income does not exceed 50% ofits total income;
- Assets situated in India constitute lessthan 50% of its total assets;
- Number of employees situated in /resident of India is less than 50% oftotal number of employees of theCompany; and

Corporate Income Tax

Residential Status of Foreign Company contd.

- Payroll expenses on employees situatedin / resident of India is less than 50% oftotal payroll expenditure incurred by theCompany.

Passive income is defined as aggregate of royalty, dividend, capital gains, interest (except in case of banks and public financial institutions), rental income and income from transactions where both purchase and sale of goods is from / to Associate Enterprises.
Determination of PoEM of companies not meeting the test of active business outside India shall involve identification of "persons" actually making key decisions and determination of "place" where such decisions are in fact being made.

In line with the definition of PoEM, the guiding principles to determine the PoEM, lay emphasis on place where,

- key management and commercialdecisions
- necessary for the conduct of thebusiness of an entity as a whole are, in substance, made

PoEM guidelines shall not apply to companies having turnover or gross receipts of INR 500 million or less in a financial year.

Author's Comment:

Since in most Indian treaties the term 'Place of Effective Management' is not defined, the definition given in the Act and explanation on such definition provided by CBDT in the Circular would also be taken into account for determination of PoEM under Indian treaties. Thus, in most cases where under the Act, the company is determined to have PoEM in India, it would also qualify as having PoEM in India under tax treaties.

In line with the intention to cover shell companies under this provision, the guiding principles emphasize that PoEM would be determined based on the principle of "Substance over form". Accordingly, it may be possible that if the board meetings are conducted in and minutes are signed in Country X, but decisions are in substance taken in Country Y, Country Y be considered as PoEM. PoEM of companies having active business outside India would thus be presumed to be outside India if majority of the BoD meetings are held outside India. However, considering that PoEM is to be determined in light of the principle of substance over form, the guiding principles provides that if the powers of BoD are exercised by other persons, PoEM shall be determined taking into consideration the residence of such other persons and not merely based on the place of BoD meetings.

Thin Capitalisation

A company is considered as thinly capitalised when its leverage is very high. High debt – equity ratio generally raises concerns of excessive interest claims from tax perspective. Interest, as against dividends, are tax deductible. This gives MNCs an opportunity to reduce their tax base in high tax jurisdictions by way of interest payments. In light of the same, OECD suggests anti-avoidance measures in Action Plan 4 of its Base Erosion and Profit Shifting ("BEPS") project. Many countries have introduced thin capitalisation rules as anti-avoidance measure, providing maximum permissible debt-equity ratio or limiting interest deductions, etc.

Applicable to:

The Finance Act, 2017 introduced provisions for limiting deductibility of interest expenses arising on debts from associated enterprises ("AEs"). The provisions are applicable on debts from non-resident AEs as well as debts from unrelated parties wherein AE has provided implicit or explicit guarantee or made corresponding deposits with the lender for provision of loan to the Tax Payer, where amount of interest or similar consideration exceeds INR 10 million.

Conditions for deductibility of Interest:

As per the new provisions, interest on debts from AEs or from unrelated parties where AE has given guarantee, shall be allowed as deduction from taxable income only to the extent of lower of –

- 30% of Earnings Before Interest, Taxes,Depreciation and Amortisation("EBITDA") of the borrower and
- Interest paid or payable to AEs / otherlenders where AE have providedguarantee or corresponding deposit.

In other words, the new section provided a fixed ratio rule, whereby, amount of interest in excess of above

Thin Capitalisation contd.

limits shall be disallowed in computation of income from business or profession for the year. Further, the amount so disallowed can be carried forward and claimed as deduction in subsequent years within the limits mentioned above, for a maximum period of 8 Assessment Years.

Debt has been defined in a wide manner to include loan, financial instrument, finance lease, financial derivative, or any arrangement that give rise to interest, discounts or other finance charges. Implicit guarantee by AE should cover cases where the AE has issued letter of comfort, etc. and guarantee fees paid to AE would also be covered by the limitation imposed herein.
The above provisions would not be applicable in case of banking and insurance companies.

Author's Comment:
It may be noted that, generally where fixed ratio rule is applied, the same is complemented by exception rule in the form of debt-equity ratio whereby if the company is adequately capitalized (i.e. its debt-equity ratio is lower than prescribed limit), limitation of interest deduction should not apply. Since this is introduced as anti-avoidance measure, exceptions with regard to adequately capitalized entities must be made. However, the current provisions do not provide this exception. This would have major impact on loss making companies which have obtained external commercial borrowings from AEs or on the basis of guarantees provided by AEs.

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General Anti Avoidance Rule

Tax Avoidance is the legal utilisation of the tax regime to one's own advantage, to reduce the amount of tax that is payable by means that are within the law. Tax evasion on the other hand is a situation where efforts are made to evade taxes by illegal means. The pretended reality of a transaction may be different from its legal and economic reality. This situation is a borderline between tax avoidance and tax evasion. Both tax avoidance and tax evasion represent tax noncompliance and activities which are unfavourable to a country's tax system.

"Every man is entitled, if he can, to order his affairs, so that the tax attaching under the appropriate Act is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow tax gatherers may be of his ingenuity, he cannot be compelled to pay an increased tax." Lord Tomlin observed in IRC v. Duke of West Minister on Tax Avoidance.

The Income Tax Act contains several Specific Anti Avoidance Regulations (SAAR) e.g. Transfer pricing, Safe Harbour, Bonus / Dividend striping, Thin Capitalization, etc. to deal with situation of tax avoidance and to some extent tax evasion. SAAR identify specific potential misuse or unintended use and provide for rules restricting the benefits or denying the availability of benefits of certain provisions in certain cases. However, they do not give power to tax authority to ascertain the intent of the parties behind any taxable transaction and merely seeks to lay down specific conditions subject to which benefits may be allowed or not allowed.

The emphasis of GAAR as contrast to SAAR is to test business and commercial substance of a transaction for taxing the economic reality of the transaction by way of look through approach. As India did not have a codified GAAR, most anti-avoidance principles were based on judicial precedents. To address aggressive tax planning and tax avoidance, the Finance Act, 2012 enacted GAAR provisions under the Act, much to the anguish of various stakeholders, to be effective from FY 2013-14 onwards. However, due to on-going discussion of provisions the implementation of it was delayed. As provided in Finance Act, 2015 the GAAR was deferred and made applicable from FY 2017-18.

General Anti Avoidance Rule contd.

Applicability

The substantive provisions relating to GAAR are contained in Chapter-X-A (consisting of section 95 to 102) of the Act. The procedural provisions relating to mechanism for invocation of GAAR and passing of the assessment order in consequence thereof are contained in section 144BA. Further, Rules (10U to 10UC) were also notified by the CBDT on applicability of GAAR provisions.

GAAR provision empowers the tax authority to declare any arrangement entered into by him to be an impermissible avoidance arrangement and the consequences in relation to tax arising therefrom shall be subject to provision of Chapter X-A – General Anti Avoidance Rules.

Impermissible avoidance arrangements

An arrangement would be treated as impermissible avoidance arrangement ("IAA") if it fulfils following conditions:

1.Main purpose of such arrangement is toobtain a tax benefit and

2.such arrangement falls within any of thefollowing situations;

a)arrangement has created rights andobligations which are not ordinarilycreated between the parties dealing atarm's length,

b)the arrangement results in misuse or abuseof provisions of the Act,

c)the arrangement lacks commercialsubstance or is deemed to have lackedcommercial substance is entered into in amanner which is not ordinarily employedfor bonafide purposes.

Tax benefit includes:

a)a reduction or avoidance or deferralof tax or other amount payable underthis Act

b)an increase in a refund of tax or otheramount under this Act

c)(a) & (b) above as a result ofapplicability of tax treaty

d)a reduction in total income

e)an increase in loss in the relevant previous year or any other previous year.

The primary onus is on the tax-department to prove that the arrangements is IAA.

However, if the main purpose of a step in, or a part of, the arrangement is to obtain a tax benefit, then notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit, an arrangement shall be presumed to have been entered into, or carried out, for the main purpose of obtaining a tax benefit. In such situation, the Tax Payer is required to prove that the main purpose of the whole arrangnment is not to obtain tax benefit.

It is worth noting that in a case where the entire arrangement may not satisfy any of the conditions above, one of the steps in or part of the arrangement may fall within the above mischief. In such an event that part or step in the arrangement may be treated as IAA and the consequences in relation to tax shall be determined with reference to such part of arrangement only.

Therefore, if there is a genuine investment flowing into a country, but if a person has used an investment vehicle for obtaining tax benefit, the action of choosing the investment vehicle can be treated as IAA. This can cause serious difficulties in many cases.

Lacking Commercial Substance

As per section 97(1) of the Act, an arrangement or any part thereof may be considered to be lacking commercial substance if it falls within any of the followings situations:

- The substance of the arrangement, as awhole, contrasts its form.
- It involves "Round Trip Financing", "anAccommodating Party", elements thathave effect of offsetting each other, orany transaction which disguises themain subject matter, such as, its value,location, source, ownership, control,etc.
- The residence / location of the party /transaction / asset is such which hasbeen chosen specifically for obtainingtax benefits and not commercialbenefits.
- It does not have a significant effect uponthe business risks or net cash flows ofany party to the arrangement apart fromany effect attributable to the tax benefit

Accommodating Party means a party whose main purpose of direct or indirect participation is to obtain a tax benefit for the assesse. An Accommodating Party need not be a related party.

While determining whether a transaction lacks commercial substance or not, following may be relevant but shall not be sufficient factors

- The period or time of the arrangement,

General Anti Avoidance Rule contd.

- tax payments under the arrangement;
- the provisions for exit routes under thearrangement

Exception

GAAR provisions shall not apply in following cases -

1. Any income accruing or arising to anyperson from transfer of investmentmade up to 31 March 2017. However,other investment income (other thanincome by way of transfer of suchinvestment) arising on such investmentshall be subject to GAAR provisions.
2. An arrangement where the tax benefitin the relevant AYs arising to all theparties to such arrangement takentogether does not exceed INR 30Million.
3. FII, being an assessee under the Act,who has not taken any tax treatybenefit and has invested in listedsecurities, or unlisted securities withthe permission of the competentauthority in accordance with SEBIregulations/such other regulations asmay be applicable to such investment.
4. Non-Resident person in relation toinvestment in offshore derivativeinstruments or otherwise in FII.

Treaty Override

Section 90 / 90A specifically provides that GAAR provisions shall override all the provisions of the Act and may be applied even where the same is not beneficial to the Tax Payer as compared to DTAA provisions. Thus, the explicit intention of the Government is to apply GAAR provisions ignoring treaty benefits available to the Tax Payer. The power of Central Government to unilaterally amend domestic law providing for treaty override is a question that would surely come up for consideration in the courts. This will also have to be seen in context as to genesis to treaty benefits i.e. whether it flows from the Constitution of India or from Section 90 / 90A of the Act. Consequences:

If any arrangement is considered as IAA, it can have either of the following consequences.

- The whole of the IAA or any parttherein can be disregarded / re-characterized / combined.
- Treating the IAA as if it had not beenentered into or carried out.
- Considering substance over form incase of related persons / disregardingaccommodating parties or by treatingthe persons as one and the same.
- Reallocation and re-characterization ofrevenue or capital accruals / receipts /expenses / deductions / reliefs orrebates.
- Relocation of the place of residence /situs of asset or transaction at a place /location other than that provided underthe IAA
- Lifting the corporate veil by applicationof the “Look Through” approach to theIAA.
- Re-characterization of equity and debt
- Where part of an arrangement isdeclared to be an IAA, the aforesaidconsequences in relation to tax shall bedetermined with reference to such partonly and not for the whole arrangement.

CBDT Clarifications on GAAR

Considering the nature of such harsh provisions, stake and industry association expressed various concerns over the invocation of GAAR provisions and how to deal with GAAR in certain situations. In response thereof, CBDT formed a Working Group in June 2016.

CBDT, after considering the comments of the Working Group, has given certain clarifications in question-answer form on GAAR provision vide its Circular No.7/2007 dated 27 January 2017. CBDT has clarified that; Provision of GAAR and SAAR can coexist and are applicable, as may be necessary, in the facts and circumstances of the case. There is no express clarification by CBDT that when SAAR is applicable, GAAR shall not be invoked.

If the anti-abuse provision in tax treaty sufficiently deals with the situation of tax avoidance, GAAR shall not be invoked in such case GAAR shall not apply to any arrangement held as permissible by Authority for Advance Ruling GAAR shall not apply to an arrangement where tax implication thereof has been explicitly and adequately considered by the Court while sanctioning such arrangement.

If the location of the SPV or FPI is finalised based on non-tax commercial considerations and the main purpose of the arrangement is not to obtain tax benefit, GAAR shall not apply. GAAR shall not be invoked merely on the ground that the entity is located in a tax efficient jurisdiction.

GAAR will not take away the right of the taxpayer to decide or choose method of implementation a transaction.

Grandfathering (Non-applicability of GAAR provision) in

General Anti Avoidance Rule contd.

respect of income arising from transfer of investment made before April 1, 2017 shall also applicable in respect of shares brought into existence by way of split or consolidation of holdings or by bonus issues in respect of shares acquired prior to April 1, 2017 in the hands of same investor.

Benefit of grandfathering is restricted to only “investment” i.e. assets held for earning dividend, interest, rentals and for capital application. Lease contracts and loan arrangement are therefore not subject to benefit of grandfathering.

Assessee is free to decide to claim tax benefit either under tax treaty or under domestic law whichever is beneficial to him on year on year basis. GAAR provision shall not be invoked to challenge the same.

Being anti-avoidance provisions, if any tax consequence has been determined under GAAR in the hands of one Tax Payer, no corresponding adjustment shall be allowed in the hands of other Tax Payer.

For invocation of GAAR, tax benefit enjoyed by all parties in Indian Jurisdiction for each AY due to IAA shall be aggregated to compute threshold limit of INR 30 million. If an arrangement is held as permissible in one year, GAAR shall not be invoked for that arrangement in subsequent year provided facts and circumstances remain same.

Further it is interesting to see as how the tax authority deals with a situation where there is a transfer of some assets, risks and function in tax favourable jurisdiction to a company having substance of doing business and the transactions satisfy the test of “transfer pricing” under the Act though such business restructuring was only motivated towards getting tax benefit. Ideally, GAAR should not apply in such circumstance, where the entire structure has substance; and is backed by arm’s length pricing of transactions, as also accepted by OECD’s TP guidelines.

This could be an area of significant litigation, which the CBDT should clarify at the earliest.

Conclusion

GAAR enables wide powers in the hands of tax department to disregard any business arrangement of taxpayers if it lacks commercial substance & the main motive of such arrangement is to obtain tax benefit. The very ‘generality’ of GAAR to seek substance over form makes it grey and uncertain. The onus of proving that the transaction is not entered into primarily for tax benefit would be on the taxpayer. This would put enormous burden on the taxpayers.

India is now one of the fastest growing markets where every part of the world would like to have its foot. In such a situation though GAAR provisions are essential to deal with the situation of aggressive/abusive tax planning and tax avoidance scheme, the fear of taxpayer lies in invocation of GAAR by tax authority in cases of genuine tax planning as available under the Act. Coming time will decide how the tax authority and judicial system will further draw a line between a tax planning and tax avoidance and to decide the level of substance needed, to treat an arrangement as permissible tax planning under the Act.

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Transfer Pricing

Secondary Adjustment Consequent to ALP Adjustments

The Finance Act, 2017, introduced new provisions wherein the Tax Payer would be required to make adjustment to the books of accounts as consequences of primary adjustment made to Transfer Price on application of Arm's Length Principle.

Applicable to:

All Tax Payers to whom transfer pricing provisions are applicable and where primary adjustment to a transfer price has been made

Background and update:

As per Section 92 of the Income Tax Act, income arising from an international transaction / specified domestic transaction ("SDT") is to be computed having regard to the arm's length price. Accordingly, where such transactions are not entered at arm's length price as defined in Section 92C of the Act, a transfer pricing adjustment is made to the income of the tax payer, unless the adjustment leads to decrease in taxable income or increase in losses. Such transfer pricing adjustment is called 'Primary Adjustment' to transfer price of the international transaction / SDT.

In view of new section 92CE, certain specified cases of such Primary Adjustment, the transfer price should be adjusted not only for tax purpose but also commercially. Accordingly, when a Primary Adjustment is made to taxable income of the assesse, a corresponding Secondary Adjustment should also be made between the assesse and its Associated Enterprise ("AE") in their books of accounts to ensure that books of accounts reflect arm's length price as the transaction value or transfer price.

The provisions relating to secondary adjustment are to be applied in cases where the primary adjustment is –

- made Suo moto by the Tax Payer in hisreturn of income; or
- made by the Assessing Officer andaccepted by the Tax Payer; or
- determined by an advance pricingagreement entered into by the TaxPayer; or
- made as per the Safe Harbour Rules; or
- arising as a result of Mutual AgreementProcedure under a double taxationavoidance agreement.

Therefore, as per section 92CE of the Act, where a primary adjustment is made to transfer prices in the above cases, the Tax Payer should recover the amount of difference between arm's length price and original transfer price i.e. the amount of primary adjustment from AE. Such amount of adjustment should be recovered from the AE and repatriated to India within 90 days from the date of either event of primary adjustment as referred above, failing which, it will be deemed as if the Tax Payer has provided advances to its AE and accordingly imputed arm's length interest at prescribed rate on such advance would be considered as income of the Tax Payer.

The timeframe for recovery and repatriation of adjustment to transfer price is 90 days from the event as specified under Rule 10CB of the Income Tax Rules ("the Rules").

The imputed per annum interest income on excess money which is not repatriated within the time limit as mentioned above shall be computed, at the one year marginal cost of fund lending rate of State Bank of India as on 1st of April of the relevant financial year plus 325 basis points in the cases where the international transaction is denominated in Indian rupee

- Where transaction is denominated inforeign currency, interest shall becalculated at six-month LIBOR as on 30thSeptember of the relevant previous yearplus 300 basis points.

These provisions are to be applicable incases of primary transfer pricingadjustments in respect of FY 2016-17 or subsequent years. These provisions would be applicable in case of international transactions wherein amount of Primary Adjustment exceeds INR 10 million and should not affect adjustments in case of SDT.

Author's Comments:

It may not be out of context to mention that restating the books as per arm's length result would increase the accumulated profit for the purpose of dividend u/s. 2(22) of the Act and hence would also impact Dividend Distribution Tax as and when the dividends are declared out of such profits.

Transfer Pricing

Secondary Adjustment Consequent to ALP Adjustments contd.

Section 92CE(2) considers that unless repatriated in prescribed time being 90 days, the adjustment would be considered as deemed advance to AE. Further, Section 2(22)(e) provides that where a company (other than company in which public is substantially interested) makes advance or loan to the shareholder beneficially holding more than 10% stake, such loan would be deemed as 'dividend' and accordingly taxable in the hands of the shareholder (and also withholding tax obligation instead of Dividend Distribution Tax).

Therefore, restatement of profits in books of account and deemed grant of advance to the AE on a combined reading could also trigger implication of 'deemed dividend' u/s. 2(22)(e) depending upon facts of the case.

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Safe Harbour Rules

Safe Harbour Rules provide circumstances where the transfer price declared by the Tax Payer shall be accepted by Tax Administrator without applying test of Arm's Length. The safe harbour rules are optional for the Tax Payer.

Applicable to:

The Rules specify categories of tax payer and categories of international transactions for which safe harbour can be claimed.

Background and Update:

Transfer Pricing provisions were introduced in India from FY 2001-02. Since introduction of the regulation, number of cases having huge disputed tax liability due to adjustment to Arm's Length price was arisen.
Applying the arm's length principle can be a fact-intensive process and can require proper judgment.
It may present uncertainty and may impose a heavy administrative burden on taxpayers and tax administrations that can be exacerbated by both legislative and compliance complexity. The difficulties in applying the arm's length principle may be ameliorated by providing circumstances in which taxpayers could follow a simple set of rules under which transfer prices would be automatically accepted by the national tax administration. Such provisions are referred to as a "safe harbour" or "safe haven".

Indian Government, in Finance Act, 2009 brought in regulations for introducing safe harbour in Indian Transfer Pricing regime. After long discussions and deliberations, first Set of Safe Harbour Rules were issued in 2013.

Countries like United States of America and Australia have been practicing Safe harbour rules for non-core services. Further, Brazil, Nigeria, Russia and Singapore provided safe harbours mainly
for financial transactions and low value adding services.
Safe Harbour rules extend certain benefits to Tax Payer and Tax Administrator as well, like

i)Certainty in Tax at the time ofentering into any intra-grouptransaction
ii)Reduction in possible litigation onArm's Length price
iii)Reduced administrative process invalidating the Arm's Length price
iv)Reduced cost of compliance for TaxPayer

CBDT, during 2013, introduced detailed Safe Harbour rules as embodied in Rule 10TA to Rule 10TG of Income Tax Rules, 1962. The Rules covered wide range of Tax Payers engaged in the business of ITeS / IT BPO services, Software Development, KPO Services, Manufacturing of Auto component and Contract R&D in Software and Pharma sector.

Safe Harbour Rules contd.

It also covered specific transactions of Loans and Corporate Guarantee transactions within the group. Despite wide range of transactions and tax payers being eligible to claim Safe Harbour, it received tepid response due to perceived high margin and ambiguity in sub-classification of transaction categories.

Accordingly, a much awaited rationalisation of safe harbour provisions is done by CBDT vide notification 46 of 2017 dated 07-06-2017.

Key Features of Update:

- Reduction in Safe Harbour Margin forSoftware development, IT EnabledServices, Contract R&D services andKPO services over operating cost. Thefollowing reflect quick comparativereductions in Safe Harbour Margins
  - For Software services / ITeS: Operating Margin (OM) over cost

  (OC) is reduced from 20%-22% to 17%-18%
  - For KPR Services: OM to OC is reduced from static 25% to 18% - 24% linked to ratio of Employee cost to OC
  - For Contract R&D – Software, margin is reduced from 30% to 24% and that for Contract R&D – Pharma from 29% to 24%
- Clarificatory changes to definition ofOperating Cost
- Introduction of Safe harbour for Lowvalue-added services wherein SafeHarbour margin is 5% over OC.
- Sub-Classification KPO Services basedon Employee Cost and relativedifference in safe harbour margin
- Structured Safe Harbour interest ratelinked to credit ratings of AssociatedEnterprise and also linked to thecurrency of loan (i.e. separate for INRand Foreign Currency). The SafeHarbour rate of interest -
  - For INR Loans is SBI Lending Rate + Basis points (ranging from 175 bps to 625 bps depending on Credit Ratings)
  - For Foreign Currency Loans shall be LIBOR + Basis points (ranging from 150 bps to 600 bps depending on Credit Ratings)
- Reduction in Commission for CorporateGuarantee from 2% to 1%

The new set of safe harbour margins for ITeS, KPO or Software services shall be applicable to the value of International Transactions upto INR 2000 million beyond this limit earlier Safe Harbour would be applicable.

Author's Comment

It is a much awaited and welcome change for Tax Payers. The CBDT has taken cognizance from various jurisprudences in respect of interest on Loans and Commission on Corporate Guarantee. There have been disputes between tax payer and tax administrator in deciding Arm's Length rate which is affected by various factors like credit rating of AEs, Currency of Loan advanced, Risk involved, Security against loans, etc. The new Safe Harbour Rules widely cover issues of Currency of Loan and credit rating. However, the effects of tenor of loans, Security and Geographical risk and like factors are missing in Safe Harbour rate of interest.

New Safe Harbour provisions shall give small taxpayers relief from various compliance hindrances and tax uncertainty contributed by validation of Arm's Length price.

The earlier Safe Harbour rules shall not be valid beyond Assessment Year 2017-18. Post that only new Safe Harbour Rules shall be available. Accordingly, post AY 2017-18, the tax payers having turnover beyond INR 2000 million shall not be eligible for claiming Safe Harbour. This seems to encourage large tax payers to opt for Advance Pricing Agreements.

Country by Country Reporting (CbCR)

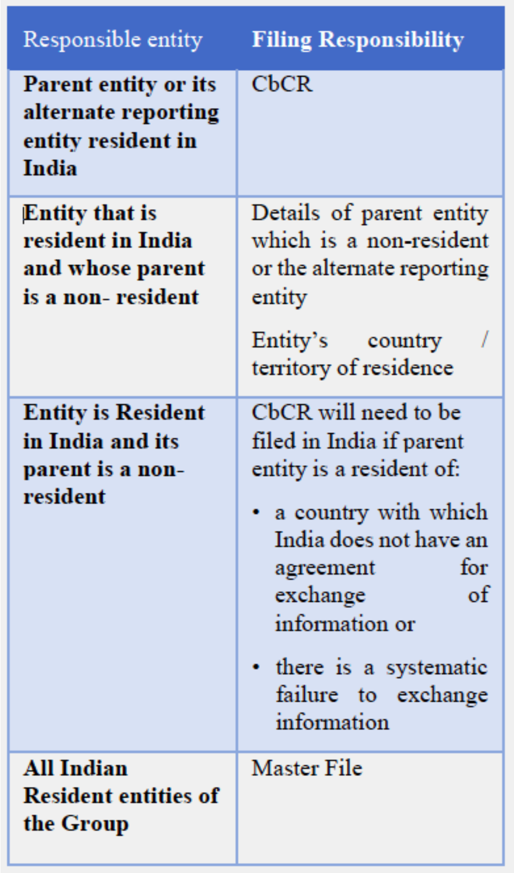
India has been an active member of the Base Erosion and Profit Shifting (BEPS) initiative and has accordingly proposed to adopt OECD guidelines in relation to Action Plan 13 on Country-by-Country Reporting (CbCR) in its tax regime.

Accordingly, a new Section has been inserted in the Act: “Section 286 – Furnishing of report in respect of International Group”.

The Indian provision introduces three tiered transfer pricing documentation consisted of (i) Master File, (ii) Local File and (iii) CbyC report.

Applicable to:

An Indian Resident entity which is required to comply with transfer pricing, would require to maintain transfer pricing documentation wherein Master File and Local File to be maintained. The entity to be required filing CbyC report if it is Indian parent company of the Group having turnover more than prescribed limit. The limit is expected to be in line with that set out in Action Plan – 13 i.e. USD 750 million.



Responsible entity	Filing Responsibility
Parent entity or its alternate reporting entity resident in India	CbCR
Entity that is resident in India and whose parent is a non- resident	Details of parent entity which is a non-resident or the alternate reporting entity Entity’s country / territory of residence
Entity is Resident in India and its parent is a non-resident	CbCR will need to be filed in India if parent entity is a resident of: • a country with which India does not have an agreement for exchange of information or • there is a systematic failure to exchange information
All Indian Resident entities of the Group	Master File

Introduction:

India will implement CbyC Report for Multinational Enterprises (MNEs) from FY 2016-17. First due date shall be 30-11-2017. Following is the summary of compliance requirements under new provisions:

Transfer Pricing Documentation:

Presently India has detailed requirement of maintaining transfer pricing documentation if aggregated value of international transaction for the year exceeds INR 10 million. The existing provisions under section 92D read with Rule 10D elaborated transfer pricing documentation in detail.

India is yet to prescribe the contents of Master File, Local file and CbyC report, however, it is expected to be in line with that is prescribed in Action Plan 13 of BEPS project of OECD.

The requirement of maintaining a Master File will also take effect from Financial Year 2016-17 onwards. As of now, unlike for the CbyC report, no threshold applies. Accordingly, all the tax payers subjected to transfer pricing regulations in India would need to comply with Master file and Local file requirements.
The Master File is meant to give an overview of the global operations of a multinational group, its organization, and global TP policy. It shall identify intangibles, value drivers, the supply chain etc. It is a shorter, less detailed report than the CbC report. The Master File shall ideally be prepared and maintained by the overseas parent company. The Indian subsidiary or Permanent Establishment would have to file it together with the Indian TP documentation upon being asked by Indian tax authorities to do so.

Penalties:

- If reporting entity fails to furnish CbyCreport within due date, a penalty leviedshall be INR 5,000 per day for a monthand if delay continues, INR 50,000 perday beyond a month
- If any further information is called forbut not submitted within time allowedINR 50,000 per day
- If inaccurate information is filed inCbyC report INR 5,00,000

Country by Country Reporting (CbCR) contd.

Author's Comments:

CbCR will facilitate the comparison of returns earned by various entities vis a vis the risk undertaken, assets employed and the functions carried out by each entity of the MNE group. It will enable the tax authorities to identify whether the return earned is commensurate with the value addition made by different entities in MNE group and whether appropriate income has been offered to tax in respective tax jurisdiction.

CbCR would enable tax authorities to easily find out if the MNE engages in ploughing chunk of its profits in no / low-tax countries. It can find out if there are any jurisdictions having an exorbitant

PBT / Revenue or PBT per employee or an extremely low / zero effective tax in a country, etc.

With introduction of CbCR, information about the group will become transparent and be readily available to the tax authorities of various jurisdictions. As a consequence, Tax payers will review their existing operating models and align their value creation activities with the returns earned and tax authorities shall have a better picture of group value chain and will be more informed while conducting transfer pricing audits.

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Goods and Services Tax (GST)

Indirect Tax Reforms

Background

In India, several taxes were being applied to goods and services. All of them were under the indirect method of collection of tax.

The provision for reducing the cascading was also incomplete leading to substantial cost of tax in the prices.

The major taxes were State VAT, Central Excise and Central Service Tax. The state VAT could not be charged by Centre, Central taxes could not be charged by State. The Tax was origin based. Excise on Manufacturing, VAT on sales and Service tax on provision of services. The receipt of any of the above was not relevant. It also means that Excise cannot be charged on traded items and VAT cannot be charged on manufacturing which led to lot of conflict and litigation to prove manufacturing or trading.

To provide for level playing field, the customs law provided some additional tax over and above the basic duty to equate the imported goods with the Excise that was borne by the local manufactured goods.
Since the VAT was a state subject, each state had its own administration and its own tax rate. This increased the tracking and paper trail requirement. Lot of manual effort was put in by administration and the assessee to comply with the law. At each state border, there were check-posts to confirm that entry and exit documents were proper and the tax paid is appropriate.

New Tax Regime:

To overcome the demarcation of the authority given by the constitution of India to state and centre in terms of taxation right, an amendment to constitution was passed unanimously in the parliament. GST is a destination based tax applied in more than 100 countries at present. It is applicable on supply of Goods and Services. Therefore, the distinction between trading

Goods and Services Tax (GST)

Indirect Tax Reforms

and manufacturing is removed. Similarly, the concept of Goods and service is also blurred as supply includes both.
GST applicable to all businesses with Turnover of INR 2 million or more and where the recipient has to pay tax no floor is prescribed. GST is made effective from July 1, 2017.

The GST network is core to the effective administration and compliance of the new tax system. The entire value chain will not experience any cascading as the law provides seamless credit of tax paid at each level against the liability at the next level.

Every participant (who is registered as tax payer) will upload its outward supply details a.k.a. the invoice line items to the network which will be confirmed by its customers. Tax paid on what is confirmed is allowed as credit to the customers and becomes tax liability of the supplier. The network is equipped to validate the transaction in B2B, B2C, interstate, intrastate, and such other parameters.

4 Acts have been passed.
- Central GST
- Integrated GST
- Union Territory GST
- State GST

There are 17 Rules that have been prescribed. The rates of tax are 0%, 5%, 12%, 18%, 28% and a cess is to be levied on items under the rate of 28% not exceeding 15%. All items are classified by HSN code and all services are classified by Service Account Code (SAC).

While for goods different rates are applicable, for services 18% is the rate of tax.

Author's Comments:
This is phenomenal shift in indirect tax system in India. The present system was ridden by lot of archaic provision and rules which made it difficult to interpret and carry on business. It led to corruption and litigation. At a conservative estimate the litigation in present system is close to INR 500 Billion.

The self-sealing of containers, the checking at state borders of dispatches, frequent visits to factories to confirm the procedural compliances, litigation to resolve classification disputes, paper work to claim refund and consequent corrupt practices on all sides will now be left behind with the abolished laws and processes. The change is welcome but will take anywhere between 6 to 24 months before the normalcy returns.

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