



Round Table Conference on Cross Border Issues in Taxation

Friday, 26th April 2024

12:30 PM- 6:30 PM - Hotel The Lalit, New Delhi

12:30 pm to 1:15 pm

Opening Ceremony

Dr. Lalit Bhasin, Chairman, IACC National Committee on Legal Services

Mr. Mukesh Butani, Convenor

Justice S. Ravindra Bhatt/ Justice AK Sikri

CEO of an American MNE

1:15 pm to 2:00 pm

Lunch

2:00 pm to 3:15 pm

Session 1

Contentious Issues in GST on Import of Services and the Way Forward

Chair: Mr. Abhishek Jain (KPMG)

Panelists

Mr. Manjunath Sugan (Ministry of Finance)

Mr. Shankey Agrawal (BMR Legal)

Mr. Umang Dhingra (Haleon)

Mr. Suranjali Tandon (NIPFP)

Import of online services for personal use from offshore digital services companies such as software sellers, content streaming platforms and social media firms and search engines hosting advertisements will be subject to 18% Integrated Goods and Services Tax (IGST), as per a finance ministry order implementing a set of tax changes introduced in the budget this year. The notification gives effect to the significant changes to the tax regime covering these non- resident digital service providers called 'Online Information Database Access and Retrieval (OIDAR).' Subsequent moves are expected to help raise revenue for the government given that social media platforms, online search engines and other digital economy firms rendering services to Indian customers in a big way from their offshore subsidiaries are covered by this change. The panel seeks to cover the bevy of challenges, and policy ramifications posed by GST on import of services and discuss the way forward.

3:15 pm to 4:30 pm

Session 2

The Crosswinds of Tax Treaty Entitlement: A Relook at the Application of GAAR and PPT

Chair: Mr Afaan Arshad (Nishith Desai Associates)

Panelist

Mr. Rasmi Ranjan Das (Government of India)

Mr. Aseem Chawla (ASC Legal)

Mr. S Ganesh (Senior Advocate)

Ms. Dhvani Mainkar (JGLS)

Mr Arijit Ghosh (Nishith Desai Associates)

With a view to curb tax avoidance, BEPS Action Plan 6 imposes minimum standards to prevent grant of treaty benefits obtained by circumvention of either the treaty itself (e.g. treaty shopping through conduit finance arrangements) or of domestic tax legislations. Under the MLI provisions, Article 7 (which deals with prevention of treaty abuse and is applicable as a minimum standard), prescribes Principal Purpose Test ('PPT') as one of the measures to prevent treaty abuse. A dichotomy arises as OECD provides jurisdictions the flexibility to adopt domestic GAAR for prevention of treaty abuse. Consequently, jurisdictions have exercised their option to adopt either PPT alone or LOB along with domestic anti-avoidance rules.

The reservation clause raises further obscurity since countries with provisions like the LOB and/or PPT in their DTAs choose to maintain status quo. Such differing approach questions the effectiveness of BEPS in attaining an outcome of uniform tax reforms. To ensure a more uniform approach, jurisdictions should adopt both PPT and LOB to effectively prevent treaty abuse and refrain from encouraging the application of domestic GAAR to treaty provisions. Moreover, in event of an overlap between domestic GAAR and PPT (treaty GAAR), PPT must prevail to give effect to object and purpose of treaty provisions. The session-at-hand shall pick on selective case studies with special focus on the India experience to analyze the application of the domestic GAAR vis-à-vis the treaty provisions under AP6 to stress that in event of a conflict, treaty should prevail. The session examines current trends in the regime and catechizes potential solutions or alternate approaches to the same.

4:30 pm to 4:45 pm

Tea Break

4:45 pm to 6:00 pm

Session 3

The Paradigm of Development-induced-discussions in Transfer Pricing and recent APA/MAP trends

Chair: Ms. Seema Kejriwal Jariwala (BMR Legal)

Panelists

Mr. Rajat Bansal (ex- JS)

Ms. Karishma R. Patarphekar (Deloitte)

Mr. Balbir Singh (Senior Advocate)

Ms. Kriti Chawla (JGLS)

Transfer pricing (TP) is an area which has been changing rapidly in recent years. This, because of the ongoing focus of the Organization for Economic Co- operation and Development (OECD) on base erosion and profit shifting (BEPS). Indeed, the burden associated with TP compliance is significant and is set to become more so with the imminent introduction of Pillar Two rules. Compliance for Indian taxpayers, which form part of a multinational enterprise (MNE), has become increasingly arduous with compulsory preparation and submissions of transfer pricing local files and master files (for MNEs with cross-border related party transactions above certain thresholds) and of the country-by-country (CbC) report for significant MNEs.

Under India TP Regulations, benchmarking exercise is required to evaluate the arm's length nature of the international transaction. A local benchmark is generally preferred. However, in certain situations wherein the tested party is the entity outside India, selecting global benchmark may be used as the same may be more beneficial. Benchmarking and its global best practices still need to be understood and woven into the Indian story.

Coupled with this arduous experience are the delayed responses to APA and MAP trends. While on the one hand, the Indian experience with APAs and MAPs have seen proliferation in the last half a decade, the overall time taken still lags considerably, when compared to developed jurisdictions, especially the USA. The panel seeks to address contentious transfer pricing issues in this regard and provide effective solutions to how the existing issues in the transfer pricing landscape can be addressed.

6:00 pm to 6:15 pm

Q&A / Closing