LATEST NEWS AND HIGHLIGHTS

USISPF organised a roundtable discussion on tax implications for US inbound businesses. The event was led by experts from Deloitte including Robert Stack, Managing Director, Washington National Tax, Pierre-Henri Revault, US Inbound Leader, Anu Alex, India Country Tax Liaison, and Tehmina Sharma, US Corridor leader.

Forum participated in 16th meeting of All India Customs Consultative Group held virtually on May 02, 2023

KEY ENGAGEMENTS IN FOCUS
## Forum’s Sector-Driven Advocacy

### Energy & Infrastructure
- Customs Duty Exemption for capital assets used in developing projects for renewable business
- Customs Duty rationalization of components used in electrolyzer technology
- Customs Duty concessions on goods required for setting up bio-fuel projects
- Waiver of CST compensation cess on purchase of coal
- GST applicability on reimbursement towards Lost-in-hole equipment
- Clarification regarding issuance of Essentiality Certificate for imported goods

### Pharmaceuticals, Medical Devices & Diagnostics
- Customs Duty rationalisation for high-end X-Ray machines
- Customs Duty rationalisation for chemicals
- Need for Independent HSN Code under Customs for Medical Refrigerators and Freezers
- Reversal of input tax credit under CST on destruction of date-expired products
- Challenges emerging from withholding tax provisions under section 194R of Income Tax Act

### Telecommunications, Media & Technology
- Rationalisation of customs duty on LCD/ TFT displays used in automotive cockpit systems

### Food & Beverage
- Differentiated GST rate for aerated and no-sugar beverages
- Rationalisation of customs duty on seedless raisins

---

### FORUM’S ADVOCACY FOR CROSS-SECTORAL ISSUES

**Engagement with Ministry of Finance**
- Clarity in taxation of online gaming from an indirect and direct tax perspective
- Extension of concessional withholding tax regime on External Commercial Bonds/ INR Bonds
- Address issues emerging from mandatory e-filing of Form 10F for non-residents
- Address impact of ‘angel tax’ provisions on non-resident investors

**Engagement with GST Policy Wing**
- Clarification on place of supply for courier services under CST Law
- Clarification on reimbursement of ESOP provided by parent company being classified as import of service
- Engagement with GST Policy Wing and GST Network to address issues emanating from restricted time limit on reporting of old invoices on e-invoicing portal

**Engagement with Department of Customs**
- Address issues arising from introduction of Electronic Cash Ledger
- Joint engagement with Finance Ministry and Department of Telecommunications to address ambiguities in Customs classification of telecommunication products and equipment

**TAX RESEARCH**
- Engagement with Industry stakeholders and experts to produce working paper on contentious issues emanating from Two-Pillar International tax framework

**MEMBER OUTREACH**
- GSTN Advisory on All India Model GST Audit Manual released by Committee of Officers on GST audit
Consultation with Tax Research Unit at Ministry of Finance to discuss GST & Customs issues for energy & infrastructure sector

Briefing session on ‘Business imperatives of modern FTAs’

Industry consultation on issues emerging from e-filing of Form 10F

16th meeting of All India Customs Consultative Group
Discussion on Tax Implications for U.S. Inbound Businesses
Virtual briefing on Amnesty Scheme under Foreign Trade Policy 2023
Consultation with CBDT on applicability of Section 56(2) (viib) of the Income Tax Act to non-resident investors
- Consultation with Tax Research Unit on Customs issues for pharmaceuticals and medical devices sector
- Consultation with GST Policy Wing on reversal of ITC on date-expired pharmaceutical goods

RECENT TAX RULINGS

In association with

In International Tax, the Supreme Court dismissed Revenue’s appeals challenging the profit attribution to foreign companies engaged in electronic global distribution services to airlines through the Computerized Reservation System. The Supreme Court held that the proportion of profits arising or accruing in India is a question of fact and upheld the concurrent findings of the High Court and ITAT. The Special Bench of Mumbai ITAT held that the rate of dividend distribution tax shall apply unconditionally on dividend paid to non-resident shareholders without any regard to the lower rate prescribed for taxation of dividend under the relevant DTAA. Mumbai ITAT held that the special provision for tax on capital gains arising to a non-resident from transfer of unlisted shares prevails over the general provisions that allow the adjustment for forex rate fluctuation. Thus, ITAT held that non-residents in such cases are not entitled to the benefit of forex rate adjustment and indexation of cost.

On the Transfer Pricing front, the Supreme Court ruled that the issue of determination of the arm’s length price constitutes a ‘substantial question of law’, therefore, the decision of the ITAT is not final and the High Courts can entertain appeals on the issues of comparable selection, choice of filters etc. Mumbai ITAT adopted ‘other method’ as the most appropriate method to benchmark royalty payment made for unique intangibles, opined that ‘other method’ was perfect as it reflected commercial pricing in the way it was actually determined after due negotiations between parties and was price-oriented. In another case, Mumbai ITAT accepted benchmarking of corporate guarantee based on the yield approach by imputing commission @ 0.35%.

Read More at Taxsutra.com

To contribute to our ongoing discussions on these matters, please write to @Shweta Kathuria and @Anikha Ashraf

US-India Strategic Partnership Forum www.usispf.org
US-India Tax Forum www.usindiataxforum.org