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INTERNTATIONAL TAXATION

MF AND CBCR - FINAL RULES AND PRACTICAL CHALLENGES

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A. Background

In keeping with India's commitment to implement the recommendations of Action Plan 13 of Base Erosion and Profit Shifting (BEPS), the Finance Act, 2016 introduced Section 286 of Income-tax Act, 1961 (the Act) providing for furnishing of **Country-by-Country Report (CbCR)** in respect of an International Group.

Section 92D of the Act which contained provisions for preparing TP documentation was also amended to provide for keeping and maintaining of **Master File.**

In continuation with the amendment, the Central Board of Direct Taxes (CBDT) on 6 October 2017, released the draft rules and forms in relation to manner of preparation and furnishing of Master File and CbCR. It is commendable, on part of CBDT, to consistently follow an inclusive approach and seeking public comments when introducing a new and important regulation.

In the draft rules circulated on October 6, 2017 the CBDT had proposed insertion of New Rules 10DA and Rule 10DB of the Income-tax Rules, 1962 (the Rules), and the new Forms were prescribed i.e. Form Nos. **3CEBA to 3CEBE.**

The Final rules in relation to Country-by-country reporting ('CbCR') and Master File ('MF') as required to be furnished to tax authorities in terms of Sec.286(8) and Sec 92(D) of Income Tax Act, 1961 have been notified on October 31, 2017.

While in principle there are no major differences in the draft rules and final rules, however a careful reading and comparison reveals certain key changes which have an impact on the nature and extent of disclosures required to be made. The notification of CbCR is likely to significantly increase the compliance burden for MNC subsidiaries and Indian MNC Groups and shall require them to re-strategize their transfer pricing policy in light of heightened disclosure norms laid down under the CbCR / Master File regime. This article discusses some of the key changes between the draft rules and the final notified rules and key implications of the final rules on Domestic and foreign MNCs operating in India.

B. Key Revisions in Final Rules vis-à-vis Draft Rules

MASTERFILE

- **Applicable Year for Threshold Limits**

  As per draft rules, MF for Financial year (FY) 2016-17 for entities having consolidated turnover of more than INR 500 crores during previous year i.e. FY2015-16. However, basis Final rules, MF for FY 2016-17 required for entities having consolidated group turnover of more than INR 500crores **during same year (i.e. FY 2016-17).**

In simple terms, data for same year needs to be looked into to confirm applicability of MF for that particular year.

- **Disclosures**

1) **Rule 10DA(1)(ii)(B)(a**) revised in final rules **to include list of all entities of International Group (IG),** as compared to list of only operating entities.

   This might result in inclusion of Constituent Entities (CEs) even if the same are not operational, investing/ financing entities etc.

2) **Rule10DA(1)(ii)(B)(c)(VIII)** revised to include details of functions performed, assets employed & risks assumed (FAR) by CEs that contribute at least 10% of **either:**

   - Revenues of group; or
   - Assets of group; or
   - Profit of group

   as compared to draft rules wherein contribution of at least 10% of total revenue, assets and profit had to be considered **cumulatively.**

   Hence the threshold of 10% to be verified by checking revenue or assets or profits **for each CE.**

3) **Rule 10DA(1)(ii)(B)(c)(IX)** revised to include description of important business restructuring transactions, acquisitions & divestments **during all accounting years,** as compared to draft rules wherein description d**uring the accounting year** were required to be reported.

   Hence, Inclusion of all business restructuring transactions, acquisitions and divestments made by the IG during previous as well as current accounting period. IGs will have to be more vigilant interms of the documentation maintained for such transactions during previous & current accounting period. Chapter IX of OECD TPGuidelines, 2017could be referred.

- **Revision in Reporting Forms:**

1) Masterfile to be furnished in"**Form 3CEAA"** instead of Form **3CEBA**as specified in draft rules;

2) According to Final rules, **Part A of Form 3CEAA shall be applicable to every CE of IG irrespective of whether entity satisfies thresholds prescribed**

   And

   Part B is applicable only to CEs satisfying thresholds prescribed.

   Hence the Final rules provide more clarity on reporting requirements

3) The Final Rules (Rule 10DA(4))clarifies that in case of multiple CEs of an IG resident in India, some or all of which satisfy prescribed thresholds, **the IG may designate one of the CEs for MF compliance.**

Further, in case of multiple CEs resident in India, none of which satisfy prescribed thresholds, IG may designate one CE to file the Part A of Form 3CEAA.

As per Final rules, the above information is to be **provided in "Form 3CEAB"** to the Director General of Income Tax (Risk Assessment) as against Form 3CEBE specified in the Draft Rules

CbCR

Final rules are largely in line with draft rules. Key changes as follows:

Revision in Reporting Forms:

Forms as per draft rules	Forms as per Final rules
Form 3CEBB – Notification Report by CE, resident in India, of non-resident IG for sub-section (1) of Section 286	**Form 3CEAC –** Intimation by CE, resident in India, of IG,parent entity of which is not resident in India, for the purposes of sub-section (1) of section 286
Form 3CEBC – Report by parent entity or an alternate reporting entity or any other CE, resident in India, for the purposes of sub-section (2) or sub-section (4) of section286	**Form 3CEAD –** Report by a parent entity or an alternate reporting entity or any other CE, resident in India, for the purposes of sub-section (2) or sub-section (4) of section286
Form 3CEBD- Notification on behalf of the IG for the purposes of the proviso to sub-section (4) of section 286	**Form 3CEAE –** Intimation on behalf of the IG for the purposes of the proviso to sub-section (4) of section 286

- **Additional Business Activity to be reported**

As per draft rules, Part B of CbC Report required disclosure of 12 business activities. However, Final rules require an additional business activity titled 'Administrative, Management and Support Services' to be disclosed.

Other revisions common to MF and CbC Report both:

- Term 'reporting year' replaced by 'accounting year'.
- In case total consolidated group revenue is in foreign currency, Final rules provide using telegraphic transfer (TT) buying rate **on the last day of accounting year preceding the accounting year under consideration,** to convert to Indian rupees
- Final rules prescribe signatories eligible to sign forms who shall be persons competent to verify return of income under Section140.

Additional disclosure requirements in Master file as compared to OECD:

- List of all entities in the group (in Indian MF requirement) vs the operational entities in OECD.
- Description of the MNE business entities (contributing to at least 10% of the group revenues, assets or profits) vs general FAR of the individual entities of the group
- Top ten unrelated lenders (in Indian MF requirement) vs important financing arrangements with unrelated lenders (as per OECD).
- List of all entities engaged in Intangible development/creation along with the names and addresses of the entities owning them (in Indian MF requirement) vs important intangibles of the MNE group and the names of the entities that legally own them.

C. Compliance Issues/ Challenges - Signaling significant increase in Indian compliance obligations?

The notification of CbCR is likelyto significantly increase the compliance burden for MNC subsidiaries and Indian MNC Groups and shall require them to re-strategizetheir transfer pricing policy in light of heightened disclosure norms laid down under the CbCR / Master File regime.

- Some countries have high thresholds (e.g. Australia, Japan, etc.), whereas some countries (e.g. Mexico, Peru, etc.) have adopted a significantly lower threshold.

  India too adopted a lower threshold of INR 500crore and related party transactions threshold of INR50 / 10 crore. With such a low threshold, many inbound MNCs having presence in India would have the obligation of preparing and filing the Master File in India, even though they may not be required to prepare the same in their home jurisdictions. This may put an additional compliance burden on domestic MNCs.

- The Final Rules have a welcome relaxation to allow only one constituent entity to File Part A and admittedly reduces compliance burden.

  However, the Final rules state that the declaration in Form 3CEAB is required to be undertaken **only by constituent entities resident in India,** this leaves the scope for interpretation with respect to multiple project offices and branch offices operating in India which are non-residents as per the Income Tax Act.

- The new regulations shall also entail disclosure of detailed group financial and strategic information as well as aggressive tax and transfer pricing positions, which could possibly open unnecessary litigation with tax authorities. Accordingly, we may experience an increased propensity of MNCs to evaluate options of entering/reviewing the advance pricing agreement (APA) in specific countries to ensure certainty.

D. Penal consequences:

Particulars	Penalties
Not maintaining and filing the required information in the master file within the due date	INR 500,000
Non-filing of CbC report by Indian resident parent company/ARE	▸ INR 5,000 per day up to one month ▸ INR 15,000 per day beyond one month ▸ INR 50,000 per day for continuing default after service of notice
Not furnishing the information called for by the tax authority within the given time limit	▸ INR 5,000 for every day up to the service of the penalty order ▸ INR 50,000 per day for the default beyond the date of service of the penalty order
Furnishing inaccurate particulars/not filing the corrected CbC report within 15 days	INR 500,000

E. Concluding Remarks

While Final rules seem to have taken into consideration comments that might have been received by CBDT, there still remain grey areas like CEs of IG that have not entered into any international transactions will still have to comply with MF/ CbCR requirements (limited – Intimations and Part-A) &for purpose of applicability of MF, value of international transactions as per books of accounts (instead of as per Form 3CEB), FAR for least contributing entities, TP policy –whether transaction wise detailed or an overview of the groups policy and the filing procedures like upload procedures etc have to be addressed. These issues might get clarified very soon.

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INCOME TAX

DIFFERENT TREATMENT OF RECEIPT- ASSESSMENT OF INCOME AND LEVY OF PENALTY

Contributed by CA Ramaprasad T

The term 'income' defined under Section 2(24) of Income Tax Act, 1961 (ITA/Act) is inclusive one. Charge of tax on income is subject to exemptions provided in Section 10 of ITA, 1961. The receipts mentioned in various clauses of Section 10 are not included in computing gross total income there by not part of taxable income for computing tax liability.

First receipt mentioned in Section 10, is income from agriculture. Sec 2(1A) has defined term 'agricultural income'.Explanation 1 of this section provides that transfer of rural agricultural land is agriculture income.

Section 45 of Act provides that transfer of capital asset as defined under Section 2(14) is chargeable to tax in the year in which year in which transfer takes place. The definition of term 'capital asset' excludes rural agricultural land from its scope. Hence transfer of rural agricultural land is not subject to tax under Section 45 of Act.

Full value consideration arising from transfer of capital asset must be considered for the purpose of computing capital gain under Section 48 of Act. Sec 50C of Act provides that for the purpose of computing capital gains the value adopted or assessed or assessable by the Stamp Duty Authority or higher amount is deemed to be full value consideration for computing capital gains.

Issue:

When a rural agricultural land sold for amount higher than value adopted or assessed or assessable by Stamp Duty Authority is excess amount treated as agricultural income, exempt from tax?

The above issue was discussed by ITAT- Chandigarh[1] .The assessee in the instant case is an individual. During the year an amount of Rs. 2,46,30,000/- was recovered from the assessee by the police related to a vehicle issue. On the basis of this information, Income Tax Authorities were asked to the assessee about the source of the said fund. In response, the assessee stated that the aforesaid cash was from the sale of his agricultural land.

Assessee has made a statement under Section 131 of Act, that he was an agriculturist and the source of the aforesaid cash was from sale of his agricultural land in rural area.

During the assessment proceedings assessee contend that the actual sale consideration for the land sold is Rs. 2,46,30,000/-. It was further stated that at the instance of purchaser to avoid the stamp duty payable to government the sale deeds were executed at Rs. 42,37,500/-.

[1]ACIT vs Mohinder Singh – ITA No. 665&666/chd/2016 &747/ Chd/ 2016

Assessing Officer (AO) added Rs. 2,03,92,500/- being the difference between actual consideration and value mentioned in the registered deed under Section 69A of the Act.

AO further levied penalty under Section 271(1)(c) of Act, holding that assessee failed to disclose the source of the amount seized from him which was over and above the consideration mentioned in the sale deed.

Assessee has made an appeal to CIT(A) against the order of the AO. The CIT(A) held that considering the facts and circumstances, evidences and the statements recorded by the parties the amount seized of Rs. 2,03,92,500/- was on account of sale consideration of his agricultural land and no addition was warranted in the hands of assessee under Section 69A.

CIT(A) deleted the penalty levied by observing that assessee had disclosed particulars of income in the return of income and further assessee had also disclosed the source of income being the sale consideration from the sale of the land.

Revenue has filed an appeal against the order of CIT(A) before ITAT.

ITAT held that once both the parties to the transaction had made to believe not only public authority but public at large that the transaction relating to purchase or sale of land between them was settled at a particular consideration, subsequently they are estopped from their act and conduct to plead that the actual consideration was at variance of the earlier representation.

ITAT further held that the assessee has been a party to the conspiracy resulting into revenue loss to the state exchequer. The extra amount received towards sale consideration of land be construed as amount paid for the execution of the registered deed of sale of land and not for the sale of land itself. The same has to be taxed as income from other sources.

ITAT relying on decision of jurisdictional High Court[2] holding the inadmissibility of oral evidence in the presence of registered deed held that nature of receipt of the income over and above registered sale considerations in the hands of assessee will not fall under Capital Gains.

On penalty issue ITAT held that assessee had disclosed the source being the amount received on sale of land.

ITAT further held that assessee under bonafide belief that land being an agricultural rural land falling outside purview of the definition of a capital asset, income therefrom was exempt from tax has not offered the same for taxation. Hence it is not the case of furnishing of inaccurate particulars or concealment of income.

[2]Paramjit Singh vs ITO 323 ITR 588

Our comments: - Tribunal while determining the nature of receipt concluded that the excess amount received is chargeable to tax at the same time deleted order of levy of penalty by supporting the view that assessee with bonafide intention may contend that the income from transfer of rural agriculture land as exempt from tax.

The assessee should have stressed more on non-taxability of receipt as it was from transfer of rural agricultural land. The tribunal has relied on Sec 91 and 92 of Indian Evidence Act while deciding the nature of income.

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GST

GST PERSPECTIVE ON APEX COURT JUDGMENT IN FORMULA ONE WORLD CHAMPIONSHIP LIMITED

Contributed by CA Sri Harsha & CA Manindar & CA Ramaprasad T

The judgment of apex court in the case of Formula One World Championship Limited vs Commissioner of Income-Tax (International Taxation)-3, Delhi reported in [2017] 80 taxmann.com 347 (SC) (FOWC)has far reaching implications not only the income tax, but also under the service tax laws or Good & Services Tax (GST) laws. In this article, we try to explore the judgment of the apex court in the said case from the perspective of GST laws.

The concept of 'Permanent Establishment' (PE) under the Income Tax laws is maturing day by day as the matters requiring interpretation of tax treaties are reaching the doors of apex court. The said concept of 'Permanent Establishment' even appears in the service tax laws or GST laws, the same was not used or tested by the indirect tax authorities, since the said concepts were brought into the statute book only from 01.07.2012, through place of provision of service rules or under GST laws through Section 2 read with Section 12 and Section 13 of Integrated Goods & Services Tax Act, 17 (IGST Act). Since, the concept of PE is attaining maturity under one law, it is only matter of time, when such concept would be used under the indirect tax laws to garner the revenue.

Before proceeding to analyse the impact of the judgment in the case of FOWC, let us understand the facts of the case, arguments and decision of the apex court pertaining to the income tax laws are discussed as under:

Facts of the case:

1. *FOWC is a UK based company which has entered a Racing Promotion Contract (RPC) by which it granted Jaypee Sports, right to host, stage and promote Formula One (F-1) Grand Prix of India.*

2. *Vide such agreement, Jaypee Sports have constructed a circuit named Buddh International Circuit for conducting such race and responsible for organising other events which are related to F-1 Gran Prix which are described as under.*

3. *Jaypee Sports is obliged to take all action necessary to ensure that the pit, paddock buildings and surrounding areas within the circuit and land are open to receive the competitors, FOWC, affiliates of FOWC, FOWC's contractors and licensees, other personnel and equipment at all times during the period commencing 14 days before the race and ending 7 days after the race. It also has to assure security to these areas – Clause 11 of the RPC*

4. *Jaypee Sports is obliged to authorize access to parts of the circuit not open to the main public only through passes issued by the FOWC. The public cannot have access to the cars in any of the places where the competitor's mechanics may be called upon to work on them and under and the validity of passes issued by FOWC is unquestionable – Clause 14 of the RPC*

5. *Throughout the term during the access period, from the test session held at the circuit till the end of the event, Jaypee Sports cannot permit, access, enable, procure or in any manner encourage others to make, create, store, record or transmit any sound recording or visual or audio-visual footage whatsoever, for broadcast or any other purpose, of any of at or pertaining to the event, including cars, drivers, competitors etc. and in fact cannot make any such recording etc. within the confines of the circuit or the land over which Jaypee Sports itself has control – Clause 18 of the RPC*

6. *Jaypee Sports has to ensure that the terms of the ticket sale, giving admittance to the event include a condition imposed on the ticket holder not to make any kind of recording or take any recording device that can store or transmit any part of the event and that the ticket holder as a spectator could be filmed and a sound made by him could be recorded for broadcast or any other such item that the FOWC could impose on Jaypee Sports – Clause 18 of the RPC*

7. *Jaypee Sports is obliged to engage a third party approved by FOWC to carry out and perform on its behalf all service relating to the origination of the international television feed and host broadcasting for each event during the term specified in the guidelines published by FOWC and provided to Jaypee Sports.*

8. *Jaypee Sports unconditionally and irrevocably assigned to FOWC all copyright and other intellectual property rights, titles and interest which it may now or may in future possess, in any image or recording or other presentation or recording in any image/form whatsoever for the duration of the rights and also give consent to FOWC to deal with such rights as it pleased – Clause 19 of the RPC*

9. *Jaypee Sports is obliged to ensure that those accredited and authorized by FOWC were permitted to enter upon the premises to make sound, television or recordings or transmissions or make films or other pictures and use the facilities throughout the access period and also undertook to accord to such personnel all help and facilities that FOWC would require, including assistance for consent, permission or authorization with any local authority – Clause 20 of the RPC*

10. *Jaypee Sports was prohibited from causing, permitting, enabling assisting or in any manner encouraging display of any advertisement (other than the normal advertisement displayed on any competitor's cars) or other displays on, near or which could be seen from the circuit or the land which, in the opinion of the FOWC, could prevent lawful transmission of images or recordings of the event. FOWC's say in this regard was final – Clause 21.*

Arguments before Apex Court:

1. The main issue under consideration is, whether in light of Section 9 of Income Tax Act, 1961 read with Section 195 ibid read with Article 5 of DTAA between India and UK, the income earned by FOWC by allowing the Jaypee Sports a right to host, stage and promote the F-1 Grand Prix in India is subject to tax in India in the hands of FOWC as business income since FOWC has a PE in India.

2. The stand of the revenue is the racing circuit was under the complete control of FOWC and thus it constitutes a permanent establishment and thereby income generated by PE of FOWC is subjected to income tax in India.

3. The stand of FOWC and Jaypee Sports was that FOWC has only granted the right to host, stage and promote the event and the entire circuit was under the control of Jaypee Sports and in fact the entire circuit was constructed by Jaypee Sports on its own cost and thus considering the circuit as PE of FOWC is not in accordance with law and accordingly the case of revenue must be set aside.

J***udgment by Apex Court:***

1. The matter before reaching the Supreme Court was considered by the High Court, which in detail held that the said circuit constitutes a PE of FOWC and accordingly the income is subjected to tax in India.

2. The apex court has blessed the approach laid down by the High Court in arriving the judgment and held that, on a combined reading of all the agreements in place, it is beyond doubt that the circuit is under complete control of FOWC despite of the fact that Jaypee Sports has constructed it.

3. Since the circuit is at the disposal of FOWC for carrying on its business activities of exploitation of commercial rights, the taxable event has taken place and said circuit constitutes PE despite of the fact that the race is held for limited period. The apex court held that when FOWC has an exclusive right to use the circuit, the number of days for which the control exists does not make any difference by placing reliance on Para 53 of High Court judgment, which is reproduced for ready reference:

   53. Having regard to the nature of the preceding discussion, ***it is evident that though FOWC's access or right to access was not permanent, in the sense of its being everlasting, at the same time, the model of commercial transactions it chose is such that its exclusive circuit access - to the team and its personnel or those contracted by it, was for up-to six weeks at a time during the F1 Championship season.*** *This nature of activity, i.e racing and exploitation of all the bundle of rights the FOWC had as CRH, meant that it was a shifting or moving presence: the teams competed in the race in a given place and after its conclusion, moved on to another locale where a similar race is conducted.* ***Now with this kind of activity, although there may not be substantiality in an absolute sense with regard to the time period, both the exclusive nature of the access and the period for which it is accessed, in the opinion of the Court, makes the presence of a kind contemplated*** *under Article 5(1),* ***i.e. it is fixed. In other words, the presence is neither ephemeral or fleeting, or sporadic.*** *The fact that RPC-2011's tenure is of five years, meant that there was a repetition; furthermore, FOWC was entitled even in the event of a termination, to two years' payment of the assured consideration of US$ 40 million (Clause 24 of the RPC).* ***Having regard to the OECD commentary and Klaus Vogel's commentary on the general principles applicable that as long as the presence is in a physically defined geographical area, permanence in such fixed place could be relative having regard to the nature of the business, it is hereby held that the circuit itself constituted a fixed place of business***

4. Based on the above analogy, both the High Court and Supreme Court has held that FOWC has a PE (through the circuit) and accordingly the income earned is subjected to tax in the hands of FOWC as business income. However, the apex court has directed the Assessing Officer to determine the income which is chargeable under the Income Tax Act of the PE of FOWC.

With the above judgment in perspective, now let us proceed to examine the impact under GST laws on the income earned by PE of FOWC. The questions before us are as under:

a. If Jaypee Sports has purchased the rights of promotion of the event for US $40 million, what would be the impact of the same would be under GST from the stand point of FOWC? Would FOWC would be treated as supplier of services and accordingly GST is required to be paid?

If Jaypee Sports has purchased the rights of promotion of the event for US $40 million, what would be the impact of the same, under GST laws from the stand point of FOWC? Would FOWC would be treated as supplier of services and accordingly GST is required to be paid?

1. From the reading of the entire judgment of the apex court, it is evident that the role of Jaypee Sports is to organise and promote the event. In absence of the above judgment, the payments made to FOWC would constitute services provided by a FOWC, who is non-taxable territory to a person (Jaypee Sports) located in taxable territory and accordingly would be subjected to GST in the hands of Jaypee Sports under reverse charge as per Entry 1 of Notification 10/2017-IT (Rate) dated 28th June 17.

2. Now that FOWC is said to be having a PE in the taxable territory as per the apex court judgment from the stand point of income tax laws, can FOWC be called as located in India for the purposes of GST laws is to be analysed.

3. For this, a reference to the definition of 'location of supplier of services' as laid down vide Section 2(15) of IGST Act is to be made. The definition has been reproduced hereunder for ready reference:

(15) "location of the supplier of services" means —

a. where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;

b. where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

c. where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply and

d. in absence of such places, the location of the usual place of residence of the supplier

4. Hence, FOWC has to decide its location by observing under which clause of the above definition of 'location of supplier of services' would gets satisfied. Let us proceed to examine the same.

   a. *where a supply is made from a place of business for which the registration has been obtained, the location of such place of business* – **Since, FOWC has not obtained any registration for provision of supply of services, this part does not apply to the facts of the case.**

   b. *where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment* – **This particular clause is relevant for our discussion, since, the circuit constitutes a fixed establishment and we shall discuss this is in more details.**

   c. *where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply and* -**Since, clause (b) is satisfied, there is no requirement to check satisfaction under this clause. However, assuming clause (b) is not satisfied, let us proceed to examine applicability of this clause. The said clause deals with provision of services from more than one establishment, which is not the facts in the instant case. Hence, we can move to next clause.**

   d. *in absence of such places, the location of usual place of residence of the supplier*-**Since, clause (b) is satisfied, there is no requirement to check satisfaction under this clause. However, assuming clause (b) is not satisfied, let us proceed to examine applicability of this clause. The phrase 'usual place of residence' has been defined vide Section 2(113) of CGST Act which states that in case of other than individuals, the place 'where the person is incorporated or otherwise legally constituted'. Assuming, clause (b) does not get satisfied, then the location of supplier of services that is FOWC would be London, since the company has been incorporated in London.**

5. Hence, from the above, it is evident that there is a fight between clause (b) and clause (d) of Section 2(15) of IGST Act, which deals with 'location of supplier of services'. If clause (b) wins the fight, the location of supplier of services that is FOWC would be India, since the location of supplier is the location of fixed establishment, which is the Buddh International Circuit in India. However, if clause (d) wins, the location of supplier of services shall be the place where FOWC is incorporated that is London.

6. Hence, if clause (b) wins, the location will be India and accordingly services provided by FOWC shall be subjected to GST in the hands of FOWC. If clause (d) wins, the location of FOWC would be in London and accordingly the services would be subjected to GST in the hands of Jaypee Sports in the capacity of recipient of service under reverse charge mechanism. Now, we must examine, whether clause (b) or clause (d) survives. Let us start with clause (b).

7. Section 2(15)(b) states that '*where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment'.* Before understanding the phrase 'fixed establishment', it is required to examine the way the sentence is constructed in clause (b).

8. It states, '***where a supply is made from a place other than the place of business for which registration has been obtained',*** would that mean:

   a. in order to fit under clause (b), whether the legislature intends to fit under clause (a) first and then it has to be interpreted that, for all instances, where supply is being made from a place (fixed establishment) other than for which registration has been obtained, then the location of supplier would such fixed establishment or
   b. would that mean the clause (a) and clause (b) are isolated instances and to fit under clause (b), there is no requirement to examine, whether the supplier is registered or not, that it to say, clause (b) must be independently tested or
   c. would that mean that clause (b) is applicable to all instances where supplier is registered and providing supplies from a fixed establishment which is not registered and a supplier who is not registered and providing services from a fixed establishment.

9. The answer to the question in our opinion is clause (b) would be applicable in instances where registration is obtained, and supply of services is being made from a fixed establishment and for a person who does not have registration in the first place and provides services from a fixed establishment. This opinion is based on Section 13 of IGST Act, which applies in a case where the 'location of supplier of services' or 'location of recipient of services' is outside India. Hence, to decide a non-resident supplier whether he is located within India or not also, the law insists to use the same definition prescribed in Section 2(15). In such a case, a non-resident does not have any registration in India and accordingly the clause (b) fails, if it is meant to interpret that only registered persons are specified under clause (b). Hence, we conclude that clause (b) applies to a person who is not registered but provides services from a fixed establishment. Now, that brings us to the concept of 'fixed establishment'.

10. The phrase 'fixed establishment' has been defined vide Section 2(7) of IGST Act, *'means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs'.*

11. From the above, it is evident that, to constitute a fixed establishment (FE), there should be a place which is characterised by sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services. The question to be answered is whether the racing circuit, which is held to be PE by the apex court constitutes a fixed establishment for the purposes of GST laws. If the concept of PE mentioned in the Income tax laws match with concept of fixed establishment under GST laws, then there is no harm applying the rationale of decision of apex court for the purposes of GST laws. Hence, the examination must be done whether the PE and FE are one and the same or different. The concept of PE/Business Connection under income tax laws has arisen from tax treaties entered by Central Government with foreign contracting states vide powers conferred under Section 90 of Income Tax Act, 1961. Hence, the search for PE must start from the definitions laid down in Section 9 of Income Tax Act, 1961 read with tax treaties. For the purposes of this article, the model tax treaty is taken into consideration for understanding the definition of PE.

12. As stated above, the concept of PE can be understood from India and United Kingdom Tax Treaty. Article 5 of such Treaty deals with PE. Vide Article 5(1), the term ***'permanent establishment' means a fixed place of business through which the business of an enterprise is wholly or partly carried on'.***

13. On a close reading of the definition of PE as laid down in the said tax treaty and FE under Section 2(7) of IGST Act, one can infer that both communicate the same objective. The tabulated form of reading helps to understand the things better:

S. No	Particulars	PE	FE
1	Source	India – UK Tax Treaty	Section 2(7) of IGST Act
2	Definition	means a fixed place of business through which the business of an enterprise is wholly or partly carried on	means a place which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs'.
3	Permanence	Yes, definition uses the phrase 'fixed place' which signifies permanence	Yes, definition uses phrase 'characterised by a sufficient degree of permanence and suitable structure
4	Business	Yes, definition states that using such fixed place of business, an enterprise must wholly or partly carry on business	Yes, in fact, scope of FE is more since it insists presence of human and technical resources to supply or receive services, that is to carry on business

14. From the above, it is evident that the concept of PE and FE is identical, and it can be concluded that PE is more general than FE. Since, the later insists for presence of human and technical resources to supply or receive the services, whereas the former does not insist for the same. Hence, we can conclude that FE is a subset of PE and to match PE with FE, it must be seen, whether there are human and technical resources at such establishment to supply or receive the services.

15. As evident from judgment of apex court, the racing circuit can be called as fixed establishment to the extent of being characterised by a sufficient degree of permanence and suitable structure. The concept of permanence must be understood from the rationale of the apex court which stated that the duration for which the circuit is hold is not relevant, since permanence/fixed varies from business to business.

16. Now, to conclude that PE is a FE, only aspect which must be examined, is whether there are human and technical resources at racing circuit, since the definition of FE lays down the extra criterion of presence of human and technical resources for supply or receipt of services. From the facts of FOWC, it is evident that there were human and technical resources for smooth conduct of the event but the question that must be satisfied is whether such human and technical resources are engaged in supply of services to call the racing circuit as FE.

17. The definition of FE states that such human and technical resources must either supply or receive services. To answer this, the role of FOWC assumes importance in the entire conduct of Grand Prix, the event. FOWC is the commercial right holder for the events of Grand Prix for 100 years by virtue of an agreement entered with Federation of International Automobile. The entire objective of FOWC was to exploit such rights for commercial consideration. Hence, with this objective, it has entered an agreement with Jaypee Sports. The entire objective survives only if the human and technical resources at the racing circuit of FOWC supports Jaypee Sports. Hence, we can conclude that human and technical resources at the racing circuit were engaged in supply of services (allowing FOWC to exploit its commercial rights to earn consideration from Jaypee Sports).

18. Hence, on a combined reading of all the above paragraphs, it can be concluded thatFE contemplated in IGST laws match with the PE as per the tax treaty between India and UK, it is held that the racing circuit is a fixed establishment, it is evident that clause (b) of Section 2(15) gets satisfied and accordingly, clause (d) fails, since the later will be applicable only when clause (b) fails.

19. Since the racing circuit is a FE as per Section 2(15)(b) of IGST Act, the location of supplier of services shall be the location of such fixed establishment, which is India and accordingly FOWC has to obtain registration for granting of rights to Jaypee Sports and charge applicable tax on the same.

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TECHNICAL SESSIONS:

S.No.	Event	Date	Speaker	Venue
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2	Crypto Currency vis-à-vis FEMA Regulations	12/01/2018	CA Murali Krishna G	SBS - Hyd
3	An overview on Revival of Struck-off Companies and the Condonation of Delay Scheme 2018	19/01/2018	CS Phanindra	SBS - Hyd
4	EOU Scheme under FTP 15-20	25/01/2018	CA Manindar	SBS - Hyd

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Tada: 8-3-425/2, Flat No. 202, 2nd Floor, Bigsun Avenue, Near SRICITY, TADA, SPSR Nellore Dist, Andhra Pradesh
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