

# TAXTIME

## NEWSLETTER

### DIRECT TAX NEWS

#### STANDARD AUTOMATED SERVICES SANS HUMAN INVOLVEMENT NOT FTS



Standard connectivity and networking services provided over the internet were held to be not taxable as Fee for Technical Services (FTS) by the Delhi Tribunal, as there was no human involvement in the supply of such services. The Tribunal observed that the services provided by the non-resident (AEs) were standard automated services. These services were provided to enable the taxpayer to send/receive data through the broadband network over the internet and intranet. The Tribunal remarked that it is a settled law that standard/common services cannot partake in the character of FTS under the Act.

Further, by their very nature and inherent characteristics, networking services over the internet and intranet including mail services cannot be provided by human activities and intervention and it has been acknowledged by various courts and Tribunals that to treat any payment as FTS, element of human involvement is mandatory.

The Tribunal noted that in the instant case, the foreign AE service provider had neither employed any technical or skilled person to provide managerial services nor was there any direct interaction between the assessee and the foreign AE. Accordingly, it was concluded that payment for the provision of such services could not be categorised as FTS.

#### MFN CLAUSE, AN INTEGRAL PART OF THE INDIA-FRANCE TAX TREATY

The Delhi Bench of the Income Tax Appellate Tribunal in its recent directive affirmed that the Most Favoured Nation (MFN) clause of the protocol forms an integral part of a tax treaty and its provisions invariably apply – irrespective of a notification in this regard. Hence, a more beneficial definition of the expression 'Fee for Technical Services (FTS)' contained in the India-UK tax treaty was to be read into the India-France tax treaty. Accordingly, taxation of income as FTS would depend upon 'making available' technical knowledge, skill or experience. The Tribunal noted that while rendering services of procuring export order for the assessee, the non-resident had not 'made available' any knowledge or skill to the assessee, which could be exploited by the assessee in the future. It was thus concluded that such services could not be taxed as FTS. The categorisation of payment as FTS depends on the factual matrix of each case. In the instant case, the Tribunal observed that no knowledge of enduring nature was transferred by the non-resident to the Indian assessee.

Thus payments were not regarded as FTS. Accordingly, the disallowance of the export commission expenses, on account of the non-deduction of tax at source, was deleted for the Indian assessee. A genuine benefit under the law was rightly accorded to the assessee, who had read the more beneficial provisions of the India-UK treaty into the India-France treaty due to the presence of the MFN clause in the latter.



## THE RISE OF 'DIGITAL NOMADS' IN GREECE



The new reality, introduced by the consecutive lockdowns due to the COVID-19 pandemic, in combination with the robust networking infrastructure, through the completion of the licensing process of 5G networks, as well as the wider technological ecosystem in Greece has paved the way for exponential growth of the digital nomad population.

According to an extensive digital nomad study performed in 2020 by Emergent Research and MBO Partners, the number of US digital nomads grew from 7.3 million to 10.9 million, depicting a 49% increase. In a constantly evolving technological environment, therefore, Greece has made significant steps, becoming one of the first countries to transform into a digital innovation destination, introducing a new law attracting 'digital nomads'.

Law 4825/2021, which has introduced the concept of the digital nomad in Greek Immigration Law with Article 11, allows third country workers to work remotely from Greece. The law outlines the process and criteria for the digital nomad visa, giving a significant motive for economic development for communities of all sizes and offering better quality of life to remote workers.

The provision of Article 11 was introduced when the technological ecosystem in Greece was mature enough to welcome new digitally friendly policies. A regulatory framework for licensing digital wallet companies and crypto-assets exchange was recently introduced, highlighting Greece's endorsement of cryptocurrencies and digital technologies.



## GOM MAY PUSH FOR HIKING GST ON SOME GOODS, SERVICES

A Group of Ministers (GoM) under Karnataka Chief Minister Basavraj S Bommai's convenorship, which began thrashing out issues related to GST rate rationalisation on Friday, is expected to recommend raising rates on some goods and services to ensure that the Revenue Neutral Rate (RNR) reaches the level it was at the time of introduction of GST.

The RNR needs to be brought to pre-GST rates to prevent revenue loss both to the Centre and the States. As on date, there are multiple rates consisting of four main rates – 5, 12, 18 and 28 per cent – and some special rates such as 0, 0.25, 1 and 3 per cent.

There was a suggestion to merge 12 and 18 per cent and adopt a median rate of 15 per cent. Various other permutations and combinations were being considered for rate rationalisation. The present GoM is expected to lay out the final blueprint.

The study recommended that the anti-profiteering agencies should examine how the decrease in tax rate helped big companies.

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### EGGS ARE FARM PRODUCE, TRANSPORTING THEM IS EXEMPT FROM GST: KARNATAKA AAR

The authority of advance ruling (AAR), Karnataka has ruled that eggs are agricultural produce and transporting them from one place to another would not draw any goods and services tax (GST), despite the tax authorities arguing for its taxability. The ruling was pronounced on an application submitted by SAS Cargo, which is engaged in the business of transportation of eggs and hatcheries by rail.

The AAR sought to know the government's position from the office of the commissioner of central tax, Bengaluru South gst commissionerate, Bengaluru.

The assistant commissioner replied that according to the GST laws, agricultural produce is any produce out of cultivation of plants and rearing of all forms of animals, except the rearing of horses, on which either no processing is done or such processing is done which does not alter its essential characteristics.

However, production of eggs appears to be a commercial enterprise and not an agricultural activity, he said. The office was of the view that GST laws and clarifications given under them are intended to give relief to farmers who in addition to cultivation may take certain agro-based activities such as animal husbandry, pisciculture and sericulture.

The office was of the view that eggs fall beyond the scope of agricultural produce, according to the intention of the GST laws and explanations. However, AAR ruled that eggs on which no further processing is done are covered under the definition of agricultural produce, according to the classification made by the Central Board of Indirect Taxes and Customs (CBIC). It also ruled that services for transporting eggs are exempt from GST.

### GST OFFICERS UNEARTH RS 34 CR ITC FRAUD



GST officers have unearthed Rs 34 crore input tax credit fraud, involving seven firms, the Finance Ministry said on Sunday.

The seven firms were created to generate bogus GST invoices, with an intent to pass on fraudulent ITC without actual movement of goods and without paying goods and Services Tax (GST) to the government.

"Based upon specific intelligence, the officers of the Anti Evasion branch of Central Goods and Service Tax (CGST) Commissionerate, Delhi (East) have unearthed a case of availment /utilisation and passing on of inadmissible input tax credit (ITC) through bogus GST invoices without actual movement of goods of Rs 34 crore (approx)," the ministry said in a statement.

"Rishabh Jain was the mastermind behind running this racket of creating bogus firms and generating/selling bogus GST invoices," the statement added.

The modus operandi involved creating multiple firms with the intent to avail/utilise and passing on of inadmissible credit. The firms involved in this network are M/s Blue Ocean, M/s Highjack Marketing, M/s Kannha Enterprises, M/s S S Traders, M/s Everest Enterprises, M/s Gyan Overseas and M/s Viharsh Exporters Pvt Ltd.

# TODAY'S QUOTE

*"We become what we think about"*

*— Earl Nightingale*

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