

Top Post



Wishing the Readers, Patrons, Clients

A Very Happy

Saraswati Pooja

Durga Pooja

Ayutha Pooja

Vijaya Dasami

Disclaimer

The views, opinions and information provided in this Newsletter are in no way to be considered legal or consultative advice. We do not make any warranties (Anandan Subramaniam – Author)

SECONDMENTS

NEW CHALLENGE
FOR EMPLOYERS

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EXPATS - GST



Demand Notices sent

for years (FY19, FY20, FY21, and FY22) are being served to many MNC's

Indian Tax (GST) authorities consider expatriate's salaries or allowances, reimbursed by Indian companies (to foreign entities), as a "supply of manpower".

Glossaries before we go into discussion of the Challenge:

1. **Economic Employer Theory**... is a concept practiced in few countries, globally, "a company that has control and management of an employee's job performance regardless of who is formal Employer and/or who is paying compensation for that employee, regardless of who is liable for the fulfillment of tax obligations.
2. **Secondment**... is an employment arrangement where an organization/employer sends its employees to another organization/employer to work for them. Usually persons with specific skills are hired from associated entities. The Secondments are usually divided into three models:
 - a. **Transfer of employment (contract of service)**
 - b. **Contract for services (through third party)**
 - c. **Dual Employment (in rare circumstances)**

3. **Reference Judgment:** C.C.,C.E. & S.T. – Bangalore (Adjudication) etc. V/s. M/s.Northern Operating Systems Pvt. Ltd. Hon'ble Supreme Court; Hon'ble Justices U.U.Lalit, S.Ravindra Bhat, P.S.Narasimha; May 19, 2022
4. **Chapter V of the Finance Act, 1994; Section 44:** "Service" means any activity carried out by a person for another for consideration and includes a declared service, but shall not include:-
 - 44(b) a provision of service by an employee to the employer in the course of or in relation to his employment
5. **CGST Act, 2017; Schedule III [See section 7]:** Activities or Transactions which shall be treated neither as a supply of Good nor a Supply of Services
 1. Services by an employee to the employer in the course of or in relation to his employment.
6. **CGST Act, 2017; Schedule I [See section 7]:** Activities to be treated as supply even if made without consideration
 2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business

Discussion

It seems, around 1,000 MNCs have recently received tax demands from GST authorities. The demands raised sought an 18% tax on salaries and allowances paid to foreign expatriates, by their overseas parent companies. MNC Companies, it seems, have been given a 30-day window to respond to these tax demands.

Further to the Hon'ble Apex Court's Judgment in M/s.NOS case, referred above the Tax authorities consider the Salaries paid to Expatriates as a "Supply of Manpower", making them taxable under GST legislation. Refer point no.2(b) above.

Such manpower is engaged by the Host country and social security benefits and other tax obligations are managed by the Host Employer, in the Host country. GST is applicable to such manpower, as the Employer in India is liable for service tax under the reverse charge mechanism.

Where the salaries are paid directly by the Indian Companies such payment may not attract GST. Refer Point no.4 and 5 above. (both Finance Act and GST Act).

But such salaries if paid by the Principal Employer (Overseas entity) then it will attract GST. Refer Point no.6 above

Any Secondments as referred in point No.2 (b) of the above, this Judgement from the Hon'ble Supreme Court (refer point no.3 of the above), would make such secondments taxable under the GST regime.

There is a service agreement between the Host entity and the Indian entity who is the recipient of the Services of Seconded.

It becomes the duty of the Indian Entity to show Employer ~ Employee relationship between them and the Seconded, to avoid such challenges.

The “economic employer theory”, (refer point no.1, above) will not Stand Legally as per the Para 52 of the Judgment referred in point no. 3, above:

“A vital fact which is to be considered in this case, is that the nature of the overseas group companies business appears to be to secure contracts, which can be performed by its highly trained and skilled personnel. This business is providing certain specialized services (back office, IT, bank related services, inventories, etc.). Taking advantage of the globalized economy, and having regard to locational advantages, the overseas group company enters into agreements with its affiliates or local companies, such as the assessee. The role of the assessee is to optimize the economic edge (be it manpower or other resources availability) to perform the specific tasks given it, by the overseas company. As part of this agreement, a secondment contract is entered into, whereby the overseas company’s employee or employees, possessing the specific required skill, are deployed for the duration the task is estimated to be completed in. This court is not concerned with unravelling the nature of relationship between the overseas company and the assessee.”

However, what it has to decide, is whether the secondment, for the purpose of completion of the assessee’s job, amounts to manpower supply.

Conclusion

1. Such issues of Taxability (on Secondments) will continue
2. The Judgment **may** have ripple effects in Income Tax Act also (on various issues)
3. Contract of Service shall be clearly established while engaging such seconded's.

(Disclaimer: The discussion on this sensitive issue, is based on a layman understanding and shall not be considered as a Legal Advice. Kindly contact your Legal/Finance Department for further advice.)

Mobile and Cyber Security

How to be Safe, with your SMART PHONE



Crime

Modus Operandi / Relief

Sextortion

Criminals approach you on Facebook or Decoy you onto a WhatsApp Video call/chat. They will then use DeepNude tools to Morph your Images and blackmail you.... They will send your morphed pictures/video to all your contacts to black mail you.

How to avoid:

1. Do not take/attend Video Calls (ordinary calls)
2. Do not entertain WhatsApp Video Calls (never pick such calls from unknown number or sometime known number also)...it might have been swapped/hacked by the cyber thief....
3. Keep your Video OFF in WhatsApp (just change the settings)

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Assortment of People Related Info, having impact on you & your Organization.

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Weekly Newsletter

Volume – 191 | 22 October 2023

	<ol style="list-style-type: none">4. If you receive any WhatsApp call or WhatsApp Video call, from unknown number, never attend and immediately BLOCK the number5. Even if your known contact is calling through WhatsApp, ensure it is he/she/they and then respond. During such time, close the front camera.6. Refrain from WhatsApp calls (many know contacts will do this regularly... but for safety, you can avoid it)7. Do not have Profile Photo of yours or your family members in WhatsApp8. Do not save your Contacts in a group/common prefix – i.e. Office-abc, Office-xyz, Office-odo and Family-pqr, Family-ddi, etc.
Fake Drug Parcel	<p>Conmen posing as Law enforcement agency personnel / Narcotics official may call you to say that a package in your name contains drugs..... and will threaten you to pay money to prevent any criminal action.</p> <p>What to do: Contact or make a complaint to the Law Enforcement Agency (Cybercrime or Police, etc.) immediately.</p>
SIM Swapping	<p>Your phone network will go blank, if your SIM is swapped. You will get a call saying that you have to press a specific NUMBER to regain it. If you do that it will activate the SIM card which was swapped by the Cyber Thief. And your phone will be with him.</p> <p>What to do: Reach the Mobile Service Provider immediately. Block the SIM (old one) and get a new SIM.</p>
Loan App downloaded from Play Store	<ol style="list-style-type: none">1. You will be hooked for a Loan with cheap interest rates2. Then they will start using all nasty practices (threatening, harassing, morphed pictures/videos etc.,) to recover loan.... Continuously, even more than the limit of the loan <p>How to get rid of this: Do not avail loan through such Apps. Don't get swayed by such luring advertisements. If you are already impacted with such fraud, contact Cyber Crime.</p>
Fake Courier Delivery	<ol style="list-style-type: none">1. You will receive a parcel, which you wouldn't have ordered2. You will be asked to pay, as it is Cash on Delivery (COD)3. If you reject it stating that you have not ordered, they will tell you that they will cancel it4. They pretend as if they are cancelling the delivery.5. To finalize the cancellation of the order, scammers trick the customers and ask for OTP. Ultimately, after receiving the OTP they hack into your Smart phone and do all Cyber Frauds.

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	<p>What to do:</p> <ol style="list-style-type: none">1. Refuse such non-ordered deliveries2. Pretend that you are not the person3. Where you have not ordered, do not accept to go for cancelling the order4. NEVER SHARE OTP with anyone.5. While handling such frauds, switch-off your phone for some time (no way other than this, you have to..... to get rid of such evils)6. If you feel that you want to do justice to others.... Take a picture of the delivery person, and the vehicle number be came-with or make note of vehicle number (may be it will be useful to some extent only, as these fraudsters' will use only stolen vehicles) and make a complaint to Local Police / Cyber Crime
<p>Distress call from known number</p>	<p>You may receive a WhatsApp message from a known (relative/friend) number..... Cyber thief would have swapped their number..... asking for Money transfer</p> <p>How to manage: Never transfer money to anyone, without talking to them and verifying the genuine request.</p>
<p>Regular Calls from (Fake) Bank customer service / Call Centre and others</p>	<p>Every day we woke-up to receive as many calls as possible from Fraudsters (in the name of Tele callers) from various mobile/landline numbers. Almost all are fake/fraud. Never take such calls and do not continue to talk to them, if you mistakenly took the call.</p> <p>This may be in the name of Offering Personal Loan/ Other Loans/ Support for Orphanage / Domestic Service care / Stock Market trading / Mutual Fund investment / Higher Education / Medical Insurance / Unit Linked Life Insurance ... etc....</p> <p>Almost all are BOGUS/FAKE/FRAUD calls. Never be sympathetic to the person calling, as no one would be sympathetic when you are a VICTIM of such calls.</p> <p>What to do:</p> <ol style="list-style-type: none">1. Never take such calls, if you see the name displaying as SPAM2. May activate Caller Identification through genuine app.3. Activate DND (Do not Disturb) in your mobile4. Do not entertain the call for more than a minute5. If you feel it is a suspicious call, turn off the Network or Phone itself for some time

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6. Do not show interest in availing their service / do not argue or shout at them (they take revenge of sharing your number to other groups or continuously harass by calling again and again) / do not share personal details of yours
7. Block the incoming Number immediately
8. If you wish to make a complaint to your service provider, you can do so, when you have registered DND

Most Importantly,

- a) When you are Busy (in a meeting - in person or on a call or otherwise), if you get such calls (may be a spam or from an unknown number), disconnect immediately..... which you can do even during meetings.
- b) Do not take such calls... many have the practice of taking the call, but continue talking in the meeting or phone and after some time disconnect or tell the caller that you are not interested..... never do this... either disconnect or do not take the call

If you are continuously being harassed by some XXXX Bank or Financial Services Company, and if you make a complaint, they will always pretend that such persons are not authorized. Big banks and Financial services companies have as many Broking Agencies, to get their services/ products are sold through them..... but when there is a problem, they are very clever enough to stay away from such Agencies.... Most of the Banks / Financial Service providers use such unfair business practice.... Hence as a Consumer / Potential Customer, you have to be AWARE....

Very recently many Agencies in the name of STOCK BROKING / SHARE MARKET INVESTMNET are also making such fraud calls....

General Precautions

1. Never have Your / Family photo as Profile Photo in the Smart Mobile Phone (suggested)
2. Do not share recently taken personal photo / video in the WhatsApp Status (do you know.... That WhatsApp status can be seen by anyone who is having your WhatsApp number)
3. Activate DND with your Service Provider (this will save you from SPAM marked calls.... It will auto disconnect)
4. Be cautious while you take calls from unknown numbers.. think twice before attending such calls
5. Never take WhatsApp Calls / Video Calls (if your known contact is using WhatsApp call for some reason, tell him/her that you may not want to take risk and would be avoiding such calls)..... Most of the times, you may not have a clue, whether it is Audio Call or a Video Call in the WhatsApp... why take unnecessary risks.... As far as possible, avoid WhatsApp calls

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6. If some caller is asking for your details first, without disclosing who they are, never share your details (even otherwise do not share to anyone)
7. **PIN and OTP cannot be shared to ANYONE**
8. Do not click any LINKS comes to you through - SMS, WhatsApp Messages or other social media apps.
9. If you feel a stranger has called you and if you feel insecure, switch-off the internet or phone for some time.
10. You can keep your Internet connection, while not using social media.... You may switch it on, only while using such Apps.

If you feel the above is irritating, do not use a Smartphone.
(more cybercrime is happening through Smartphone only....)
Crime through ordinary mobile is comparatively less.

Sacrifice Smartphone or Safeguard yourself

