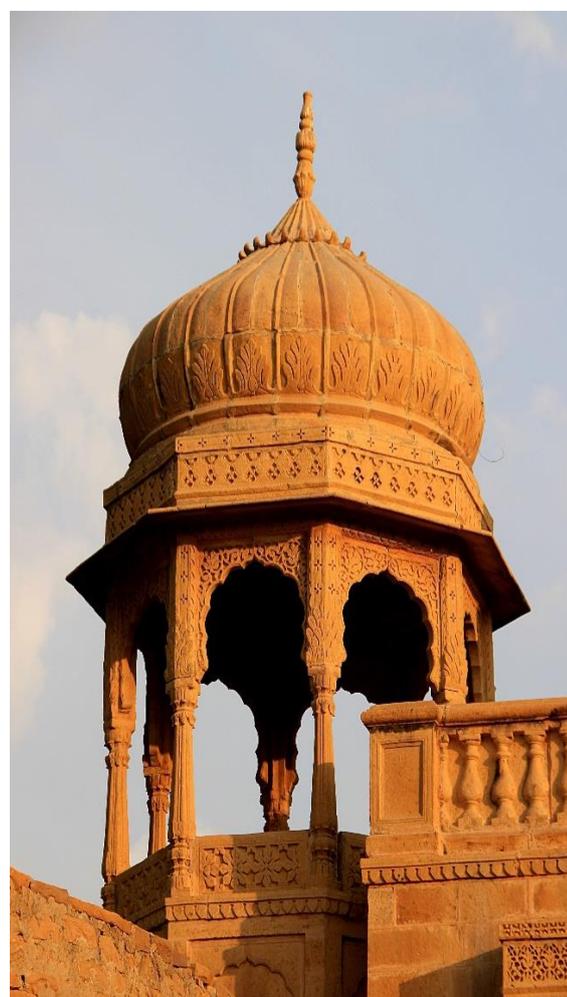


Corporate Update

April | 2021

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FOREWORD



Dear Reader,

The second wave of Covid-19 in India continues to cause unprecedented levels of cases & casualties. The Government of India and various state governments have been caught totally unprepared for the same. Emergency measures are now being taken to control the spread, including with the International help from across the world.

However, a national lockdown has not been declared, though various state governments have been directed to take such action as they deem necessary depending upon the situation in a particular state. Some states have already enforced the lockdown considering the situation. The working results of many companies would be greatly affected by the current situation.

Keeping the current situation in view, the Government of India has further extended dates for many compliances and limitation period for tax assessments which was expiring on March 31, 2021.

We cover in this update latest developments in the field of tax, corporate law & other Regulations.

C.S. Mathur
Partner

DIRECT TAX

International Taxation

High Court upholds lower tax rate of 5% under the India-Netherlands DTAA by invoking MFN clause

Concentrix Services Netherlands B.V. v ITO
 [2021] 127 taxmann.com 43 (Delhi)

The High Court of Delhi has recently held that the withholding tax rate on Dividends under the tax treaty between India and Netherlands ought to be considered as 5% (instead of 10% as per Article 10 of such tax treaty), in terms of the Most Favoured Nations ('MFN') Clause in the Protocol to the tax treaty.

In terms of the aforesaid protocol, if after the date of signature of the India-Netherlands tax treaty, India signs a tax treaty with an OECD member country which provides a lower tax rate or restricted scope of taxation of dividends, such lower rate or restricted scope shall be applicable to the India-Netherlands tax treaty. Such applicability shall commence from the date of entry into force of the latter tax treaty.

It may be mentioned that after signing the tax treaty with Netherlands, India did enter tax treaties with certain European countries, wherein, a lower tax rate of 5% on dividends was provided, such as Slovenia, Lithuania, and Columbia. However, such countries became members of the OECD much after their relative tax treaties with India were signed.

On the facts of the case, the petitioner is a Dutch company holding 99.99% shares in an Indian company. The petitioner filed an application under Section 197 with the Income tax authorities, seeking issuance of a certificate to authorize the Indian company to remit dividend at the rate of 5% by applying the aforesaid MFN clause. However, the tax authorities issued a certificate stipulating the rate of 10% as

prescribed in Article 10 of the India-Netherlands tax treaty.

Thereafter, the petitioner filed a writ petition before the High Court of Delhi. Upon hearing arguments of both parties, the High Court held that petitioner shall be entitled to the benefit of the aforesaid MFN clause and thus, the lower tax rate of 5% was applicable to dividends. The key observations of the Hon'ble Court are as under:

Rejecting the argument advanced by the tax authorities, the Court held that the protocol is an integral part of the tax treaty and is not required to be notified separately.

For applicability of the MFN clause, it is not relevant that the countries with whom, tax treaties were subsequently entered into, should also be members of the OECD at the time of execution of such tax treaty. What is relevant is that the condition of being an OECD member must be fulfilled at the time when the taxpayer makes a request for issuance of a lower withholding tax rate. As the aforesaid countries had become OECD members much before the application under Section 197 was filed (Slovenia – 2010, Lithuania - 2018, Columbia - 2020), the MFN clause shall be applicable.

The Hon'ble Court also relied on the decree issued by the Kingdom of Netherlands on the very same aspect. In terms of the said decree, Netherlands has interpreted that the tax rate of 5% on dividends under the India-Netherlands tax treaty shall be applicable from the date on which Slovenia became a member of the OECD, i.e. July 21, 2010.

The High Court held that the principle of 'Common Interpretation' should be applied to ensure consistency and equal allocation of tax claims between contracting states. While doing so, the High Court reiterated the time-tested principle that international tax treaties are not subject to technical rules of interpretation.

Based on the aforesaid observations, the High Court quashed the certificate issued by the tax authorities and directed the authorities to issue a fresh certificate, which provides a withholding tax rate of 5%.



Anuj Mathur

Senior Director
Tax Advisory

☎ +91 11 4710 2371

✉ anuj@mpco.in

Domestic Taxation

Highlights of the Press Release dated April 24, 2021 extending due dates for completion of various proceedings under Income Tax Law

Press Release dated April 24, 2021

In the wake of the COVID-19 pandemic, the Government has, from time to time, extended the timelines for completion of various proceedings under the Income tax law. Various notifications have been issued under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 to extend the statutory due dates which were falling due between March 20, 2020 to March 31, 2021.

Recently, by Notification 20/2021 dated March 31, 2021, time-limits for issue of notice under section 148 of the Act, passing of consequential order for direction issued by the Dispute Resolution Panel (DRP) and processing of equalisation levy statements were extended to April 30, 2021. However, as the hardships being faced by taxpayers as well as the tax administration due to the present wave of the pandemic remaining unabated, the Government has now further extended the timelines from April 30, 2021 to June 30, 2021.

In this regard, the Government has issued a Press Release dated April 24, 2021, the details of which are as under:

- The due date for completion of assessment/ reassessment proceedings which had earlier been extended to April 30, 2021, now stands extended to June 30, 2021. By virtue of this extension, *inter alia*, the limitation period for assessment proceedings for Assessment Year 2018-19, shall expire on June 30, 2021;
- The due date for passing final assessment order in pursuance to the directions of Dispute Resolution Panel (DRP) has been extended from April 30, 2021 to June 30, 2021;
- The due date for issuance of notice for re-opening of assessment has been extended from April 30, 2021 to June 30, 2021;
- The due date for sending intimation of processing of statements filed by the taxpayers under equalisation levy has been extended from April 30, 2021 to June 30, 2021;
- The CBDT has also granted an extension of two months of making payment of 100% of the disputed tax (without any additional amount) under The Direct Tax Vivad Se Vishwas Act, 2020 (DTVSV) from April 30, 2021 to June 30, 2021. However, there has been no extension in the time limit for filing declaration under DTVSV which expired on March 31, 2021.

It has been specified in the Press Release dated April 24, 2021 that necessary notifications shall be issued in due course to extend the above due dates.

Extension of due dates related to certain compliances by the taxpayers under the Income Tax Law

Circular 8/2021 dated April 30, 2021

Vide Circular 8/2021 dated April 30, 2021, the Government, in order to mitigate the difficulties being faced by the taxpayers in complying with Income tax provisions due to the continuing COVID-19 pandemic, has extended the following time limits:

- The due date for filing income-tax return in response to the notice issued under section 148, for which the last date of filing is April 01, 2021 or thereafter, has been extended to May 31, 2021 or within the time allowed under that notice, whichever is later;
- The due date for filing belated return under section 139(4) and revised return under section 139(5) of the Income Tax Act for the assessment year (AY) 2020-21, which was required to be filed on or before March 31, 2021, has been extended from March 31, 2021 to May 31, 2021;
- The due date for filing appeal to Commissioner (Appeals), for which the last date of filing is April 01, 2021 or thereafter, has been extended to May 31, 2021 or within the time provided under the relevant section, whichever is later;
- The due date for filing objections before the DRP, for which the last date of filing is April 01, 2021 or thereafter, has been extended to May 31, 2021 or within the time provided under the relevant section, whichever is later;
- The due date for payment and furnishing of challan-cum-statement

for tax deducted under section 194-IA (on transfer of certain immovable property other than agricultural land), 194-IB (Payment of rent by certain individuals or Hindu undivided family) and 194M (Payment of certain sums by certain individuals or Hindu undivided family exceeding Rs 50,00,000) of the Income Tax Act, which were required to be paid and furnished by April 30, 2021 has been extended to May 31, 2021;

- The due date of furnishing statement in Form 61 (statement of declarations received in Form 60 in respect of non-PAN cases), which is due to be furnished by April 30, 2021, has been extended to May 31, 2021.

It is expected that the Government shall, in due course, issue necessary notifications to give legislative effect to such Circular.



Mankush Soni

Senior Manager
Tax Advisory

☎ +91 11 4710 3319

✉ mankush@mpco.in

OTHER TAXES/ CLAIMS RELATED ISSUES

Insolvency and Bankruptcy Code

Supreme Court upholds that after approval of the Resolution Plan (RP) under IBC, all claims/ debts arriving under any Law, including taxes or other statutory dues not included in RP would abate

The Supreme Court of India, in a batch of appeals involving different set of facts, has pronounced its judgment on the issue of admissibility of claims after the Resolution Plan is approved by the adjudicating authority under Insolvency and Bankruptcy Code, 2016 (IBC).

The Supreme Court, for the purpose of disposing off the appeals, formulated the following set of questions:

- i. Whether any creditor including the Central Government, State Government or any local authority is bound by the Resolution Plan once it is approved by an adjudicating authority under Section 31(1) of the IBC?
- ii. Whether the 2019 amendment to Section 31 of IBC is clarificatory/ declaratory or substantive in nature?
- iii. Whether after approval of resolution plan by the Adjudicating Authority, a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the Corporate Debtor, which are not a part of the Resolution Plan approved by the adjudicating authority?

The claims in the appeals before the Supreme Court related to taxes like VAT, Service tax and uninvoked bank guarantees, etc. The brief facts involved in the appeals are as under:

1) Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited

In this case the issue involved was whether the corporate guarantee which was uninvoked could be considered as matured claim of the applicant and consequently, be considered as 'operational debt'. Further, whether the Committee of Creditors (CoC) erred in

rejecting the plan of the respondent.

2) M/s Ultratech Nathdwara Cement Limited Vs. State of Uttar Pradesh and Others

The order of the High Court of Allahabad was challenged to the extent it gave directions that the appellant should avail of the alternative remedy of filing a second appeal available under the VAT Act, instead of abating the tax proceedings. The tax department in this case took the view as the relevant period is prior to 2019 amendment to Section 31 of IBC, the said amendment would not be applicable to the debts owed to the State Government or Central Government.

3) M/s Monnet Ispat & Energy Limited and Another Vs. State of Odisha and Another

The main issue in this case was recovery of service tax demand by the authority for the period prior to the approval date.

4) M/s Electrosteel Steels Ltd, Bokaro Jharkhand Vs. State of Jharkhand and Others

In this case, the issue pertained to the recovery of tax penalty under Jharkhand VAT Act for the period prior to the date when 2019 amendment came into effect. In this case, the earlier appeal of the appellant was rejected by the High Court of Jharkhand on the following two grounds:

- (1) The management of the appellant was taken over by M/s Vedanta Ltd. which only has locus to file writ petition;
- (2) Resolution Plan was not binding on the State Government since it had not participated in the Corporate Insolvency Resolution Process (CIRP) proceedings.

Decision of the Supreme Court

The Supreme Court after considering the arguments of the Petitioners as well as the Respondents held that the commercial wisdom of Committee of Creditors (CoC) is paramount, which is for ensuring completion of the stated process within the timelines prescribed under the IBC. The Supreme Court reiterated that the statute has not invested jurisdiction and authority either with NCLT or NCLAT to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same. The scope of judicial review by appellate authority is limited to the extent provided under Section 61(3) of IBC. It thus rejected the challenge to the commercial wisdom made by the respondent in *Ghanashyam Mishra and Sons Private Limited V. Edelweiss Asset Reconstruction Company Limited*.

The Supreme Court underlined that the legislative intent of making the resolution plan binding on all the stakeholders after it gets the approval from the adjudicating authority is that, after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. It held that the dominant purpose of the resolution plan is that the resolution applicant should start with fresh slate on the basis of the resolution plan approved.

The Supreme Court emphasized that in view of the provision of Section 238 of IBC, the provisions thereof will have an overriding effect, if there is any inconsistency with any of the provisions of the law for the time being in force. Thus, the Supreme Court highlighted that the proceedings even under a tax law, which is not part of the resolution plan, cannot continue after the resolution plan is approved.

On the issue of applicability of 2019 amendment which clarified that the resolution plan approved by the Adjudicating

Authority shall also be binding on the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force, is owed, the Supreme Court held that even without the 2019 amendment, the Central Government, any State Government or any local authority to whom a debt is owed, including the statutory dues, would be covered by the term 'creditor' and in any case, by the term 'other stakeholders' as provided in Section 31(1) of IBC. Consequently, the resolution plan approved by adjudicating authority was binding on Central Government, any State Government or any local authority including tax authority. Thus, the claims/ demands which are not part of the resolution plan shall stand extinguished.

Conclusion

Based on the aforesaid, the Supreme Court concluded as under:

- (a) Once a resolution plan is duly approved by the Adjudicating Authority under Section 31(1) of IBC, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders.
- (b) On the date of approval of the resolution plan, all claims which are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.
- (c) The 2019 amendment to Section 31 of the IBC is clarificatory and declaratory in nature and therefore, will be effective from the date on which IBC has come into effect.

(d) Consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 of IBC could be continued.

With the aforesaid decision of Supreme Court, it has put to rest the controversies involving challenge to the commercial wisdom of Committee of Creditors. Further, with the Supreme Court holding the 2019 amendment as clarificatory, it would provide much needed respite from the uncertainty of receiving tax demands relating to the prior period. In our view, the aforesaid judgment would help quick resolution of insolvency process.



Jatinder Singh

Senior Director
Tax Advisory

☎ +91 11 4710 2272

✉ jatinder@mpco.in

INDIRECT TAX

Goods and Services Tax

Relaxation, Extensions and Waivers in GST Compliances in pursuance of COVID-19

Relief in rate of Interest & Waiver of Late Fee for filing of GSTR-3B (vide Notification No. 08/2021 dated 01.05.2021 & 09/2021 dated 01.05.2021 effective from April 18, 2021 & April 20, 2021 respectively)

Lowering of interest rate for late filing of monthly/ quarterly returns in Form GSTR-3B as well as for late filing of Form CMP-08 by

the composition taxpayers.

Please see *Annexure A* for details.

Due date of filing GSTR-4 has been extended vide Notification No.10/2021 dated 01.05.2021 effective from April 30, 2021

The due date for furnishing return in Form GSTR-4 for the quarter year ending March 31, 2021 has been extended from April 30, 2021 to May 31, 2021.

Due date of filing ITC-04 has been extended vide Notification No.11/2021 dated 01.05.2021 effective from April 25, 2021

The due date for furnishing the declaration in Form GST ITC-04, in respect of goods dispatched to a job worker or received from a job worker, during the period from January 01, 2021 to March 31, 2021 has been extended from April 25, 2021 to May 31, 2021.

Due date of filing GSTR-1 has been extended vide Notification No.12/2021 dated 01.05.2021

The due date for furnishing details of outward supplies in Form GSTR-1 for the month of April, 2021 has been extended from May 11, 2021 to May 26, 2021.

Relaxation in Applicability of Rule-36(4) vide Notification No.13/2021 dated 01.05.2021

Rule 36(4) shall apply cumulatively for the period April and May, 2021 and cumulative adjustment of input tax credit for the said months shall done in Form GSTR-3B to be filed for the tax period May, 2021.

The details of outward supplies using IFF for the month of April, 2021 can be furnished from May 01, 2021 till May 28, 2021.

Relaxation in Other Compliances vide Notification No.14/2021 dated 01.05.2021, effective from April 15, 2021

Where, any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from April 15, 2021 to May 30, 2021, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto May 31, 2021, including for the purposes of-

- completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called; or
- filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called.

Validation of monthly GST returns through EVC till May 31, 2021 via Notification No. 07/2021-Central Tax dated April 27, 2021

Any registered person, including Private Limited Company, can furnish their returns in Form GSTR-1 & Form GSTR-3B through electronic verification code (EVC) during the period ranging from April 21, 2021 to May 31, 2021.

In other words, GST returns can also be filed without using DSCs during the period of April 21, 2021 to May 31, 2021. The facility to file returns through EVC is an additional facility and assesses who wish to file their returns using DSCs, can continue to do so.

Filing of return under QRMP Scheme

Any registered person, who wishes to opt in or opt out of the Quarterly return filing & monthly payment of tax (QRMP) Scheme, for the quarter ending April-June 2021, shall opt for the same before April 30, 2021.

CBIC issues advisory on implementation of PMT-03 to Re-Credit the ITC sanctioned as Refund

It has been clarified by the Government that if the tax was paid by the assessee by partly debiting the credit ledger and partly debiting the cash ledger, the refund shall also be sanctioned in the same proportion. The cash part has to be sanctioned and credited to the bank account of the taxpayer by the issuance of RFD-05 and the credit part should be re-credited to the electronic credit ledger of the taxpayer through PMT-03.

Relaxation to assessee whose GSTIN cancelled during 15.03.2020 to 14.03.2021 via Circular P/35/2021 dated 07.04.2021

In computing any period of Limitation, for any suit, appeal, application or proceedings, the period from March 15, 2020 till March 14, 2021 shall stand excluded. Consequently, the balance period of Limitation remaining as on March 15, 2020, if any, shall become available with effect from March 15, 2021.

If the Registration certificate issued under GST is cancelled for the reasons referred in Section 29(a) to (d), and any application for revocation of cancellation of Registration received after thirty days from the date of cancellation, and if such period falls between March 15, 2020 till March 14, 2021, the balance period of Limitation remaining as on March 15, 2020, if any, shall become available with effect from March 15, 2021.

If the tax payer filed application for revocation of cancellation of Registration and if the said date of filing application falls within 30 days after excluding the period from March 15, 2020 to March 14, 2021, the Proper officer shall pass revocation order on merits subject to fulfilment of conditions stipulated in the Rules by considering the said application filed within 30 days.



Karan Chandna

Senior Manager
Indirect Tax

☎ +91 11 4710 3381

✉ karan.chandna@mpco.in

CORPORATE LAW

Corporate Responsibility

MCA Clarification on spending of CSR Funds for setting up makeshift hospitals and COVID care facilities

General Circular No. 05/2021 dated April 22, 2021

Earlier, the Ministry of Corporate Affairs (MCA) vide General Circular No. 10/2020 dated March 23, 2020 had clarified that spending of CSR funds for COVID-19 is an eligible CSR activity.

In continuation with the above circular, MCA has now issued General Circular No. 05/2021 dated April 22, 2021, wherein it has further clarified that “setting up of makeshift hospitals and temporary COVID care facilities” is an eligible CSR activity under item no. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to the promotion of health care, including preventive health care, and disaster management, respectively.

The companies may undertake the aforesaid activities, in consultation with the State Governments, subject to fulfilment of Companies (CSR Policy) Rules, 2014 and circulars issued by MCA, from time to time.



Rakhi Chanana
 Director
 Legal & Secretarial Services
 ☎ +91 11 4710 2259
 ✉ rakhi@mpco.in

REGULATORY

External Borrowings

Commercial

Relaxation in period of parking of unutilised ECB proceeds in term deposits

A.P. (DIR Series) Circular No. 01 dated April 07, 2021 issued by the Reserve Bank of India

With a view to provide relief to the External Commercial Borrowing (ECB) borrowers affected by the COVID-19 pandemic, the Reserve Bank of India vide A.P. (DIR Series) Circular No. 01 dated April 07, 2021 (RBI Circular) has introduced an amendment to the Master Direction on “External Commercial Borrowings, Trade Credits and Structured Obligations”. The said RBI Circular stipulates, as a one-time measure, to provide relaxation of the period of parking of unutilised ECB proceeds in term deposits.

In terms of the RBI Circular, unutilised ECB proceeds drawn down by the ECB Borrower on or before March 01, 2020 can be parked in term deposits with AD Category-I banks in India prospectively for an additional period up to March 01, 2022.

Prior to introduction of the RBI Circular, ECB borrowers were permitted to park ECB proceeds in term deposits with AD Category-I banks in India for a maximum period of 12 months cumulatively.



Divya Astha
 Director
 Transaction Advisory
 Services
 ☎ +91 11 4710 2372
 ✉ divya@mpco.in

Important dates to remember

Particulars	Date
Deposit of TDS/ TCS for the month of May, 2021	07.06.2021
Deposit of TDS and challan-cum-statement u/s 194-IA, 194-IB and 194M for March, 2021	31.05.2021
Filing of TDS return for quarter ending March 31, 2021	31.05.2021
Filing of TCS return for quarter ending March 31, 2021	15.05.2021
Filing of GSTR-1 for the month of April, 2021	26.05.2021
Filing of GSTR-3B for the month of April, 2021	20.05.2021
Payment of GST for the month of April, 2021	20.05.2021

For further information, please contact:



C. S. Mathur
Partner
☎ +91 11 4710 2200
✉ csm@mpco.in



Vikas Vig
Partner
☎ +91 11 4710 3300
✉ vvig@mpco.in



Surbhi Vig Anand
Partner
☎ +91 11 4710 2250
✉ surbhivig@mpco.in

Mohinder Puri & Co.

New Delhi
1 A-D, Vandhna,
11, Tolstoy Marg,
New Delhi – 110 001

MPC & Co.

New Delhi
Pune
Vadodara

Associates

Ahmedabad
Bangalore
Chennai
Hyderabad
Mumbai

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Annexure A

Aggregate Turnover	Tax Period	First 15 days from due date	Next 15 days from due date	After 30 days from due date	Late fee Relaxation
More than INR 50 million	March & April, 2021	9%	18%	18%	15 days
Upto INR 50 million	March & April, 2021	Nil	9%	18%	30 days
Upto INR 50 million Quarterly filers	Quarter ending March, 2021	Nil	9%	18%	30 days
Return under Composition Scheme	Quarter ending March, 2021	Nil	9%	18%	30 days