



Re-evaluating Tax and Compliance function to strengthen business conservation in challenging times

COVID-19 has been declared as a pandemic, and there is no running from the demon! This pandemic has crippled the global economy, and its detrimental impact has spread rapidly. In order to tame this domino effect, India was under lockdown for more than 60 days, which has led to significant operational disruption for business houses. The Indian Government has initiated the unlock 1.0 to restart the economy as it is imperative to find ways and means to navigate through these turbulent times.

As it's rightly said, extraordinary times call for innovative thinking and extraordinary solutions. Instead of completely suspending the operations, companies have managed to operate albeit at reduced capacity during the lockdown through the effective use of technology to ensure the smooth functioning of business operations as well as compliances. However, all said and done, most of the businesses have been impacted due to lack of demand, and hence it becomes crucial for companies to spend money wisely and conserve capital. The overall measures for cost-cutting have been implemented by the companies, but it would also be worthwhile for companies to examine tax savings, which can be developed by re-aligning their tax structure, transfer pricing policies, etc. We have tried to capture a few aspects of how corporates can manage tax and compliance function.

Managing withholding taxes/TDS (local and foreign remittance)

- While the government has granted relaxation in payment of interest by reducing the interest rates from 12%-18% to 9%, it would be essential for the companies to manage the compliances within the time prescribed in order to avoid interest costs in such challenging times;
- The government has also reduced the TDS rates by 25% for resident vendors, which creates an opportunity for corporates to conserve such additional cash in the company by negotiating better payment terms with vendors;
- With respect to non-resident payments, the company can re-evaluate its grossed-up arrangements, where on a conservative basis, taxes would have deposited. One may take a calculative risk on certain payments by adopting reasonable tax positions;
- Companies can also consider using various automated tools, which help in working on data remotely and also help in managing compliances with limited resources;
- Wherever the TDS is expected to be higher, the corporates should approach the tax officer to obtain the lower deduction certificates, which would assist in having better cash flow for them.

Direct Tax Costs

The new reality is the disrupted business across the globe due to halted operations against the background of the pandemic. In order to survive and conserve the tax outflow, the corporate may consider the following aspects:

- Re-looking at overall group structure to identify tax leakages and opportunity of tax savings and taking corrective measures;
- A corporate may re-examine its existing tax structure and evaluate with the help of tax professional whether there would be an opportunity to reduce the tax cost for the company;
- The corporates may adopt a conservative approach on projecting its profitability for the reduction in payment of advance taxes, to conserve the cash. There is no doubt that the tax officer would peruse the corporates to pay additional advance tax in cases of major shortfalls, but corporates should create its appropriate business cases for reduction payment of advance taxes.

Managing Tax Assessments

Not only the business houses, but even the revenue authorities have shifted from the usual assessment procedure to the digital platforms. New applications are developed to bring a paradigm shift in taxation by promoting faceless assessment. This approach ensures the ease of compliance, transparency, efficiency, and expeditious disposal of cases.

With the outbreak of COVID-19, the Indian Judiciary has also shifted to digital modes of hearing which can be observed with the developments below:

- Supreme court had announced hearing of urgent cases via video conferencing;
- The appellate tribunals accepted adjournments over e-mails;
- The revenue officers are also working from home.

In such an environment, it becomes a task for the corporates to be compliant with the notices issued by the tax department. Given that entities no longer work from their office area, software applications that maintain tax documents and litigation trackers would prove to be a knight in the shining armor.

Transfer Pricing

While the businesses are facing operational challenges, the multinationals are encountering additional challenges of reconsidering the reasonability of the pricing strategies being utilized for intercompany purchases and sales of goods and services.

Transfer pricing is a study rooted in economics and functional analysis. There is a need to re-examine the transfer pricing models in case there is any change or re-allocation of the functions performed or risk assumed within the group. Further, a detailed industrial analysis reflecting the impact of this pandemic on the industry, in general, is indispensable.

A few important considerations for corporates from a transfer pricing standpoint could be –

- For a captive (Software development/IT-enabled services) services provider, having cost plus mark-up remuneration model, it would be important to factor the impact on operations/profitability at the group level while renegotiating the mark-up rate with the parent entity (service recipient). The analysis of the impact will have to be well documented to justify any reduced mark-up rate and the factors considered during renegotiation.
- Similarly, taxpayers who are using profit-based methods to justify their intra-group transactions also need to carefully analyze the financial statements of comparable companies to assess how they are impacted due to COVID-19 while making economic adjustments.
- Advance Pricing Agreement (APA) program has been highly successful in India, since its introduction. Considering the impact COVID-19 has had on the businesses across the world, it is very likely that the corporates would have to renegotiate the intra-group pricing policy, despite an APA in place. It is pertinent to note that the Indian APA program has necessary provisions to enable both tax authorities as well as taxpayers, to renegotiate the APA terms. It will not be surprising if we see taxpayers (already having entered into APA) in large numbers approaching the authority with a request to renegotiate the APA terms to reflect the commercial reality and the impact of COVID-19.
- The existing safe harbour regime in India enables taxpayers to apply for the Safe Harbour scheme for the financial year up to FY 2018-19. The CBDT is yet to renew the said provisions for FY 2019-20 and onwards. Given the current environment, it is highly possible that the CBDT would announce lower safe harbor margins for the covered transactions from the existing level.

Managing associates and team

There is no denying the fact that the lockdown may create a slowdown in overall business activity. This difficult time could be utilized by tax heads/managers productively by connecting with the team through various initiatives such as:

- Professional training for the team;
- Group and team bonding activity – ensuring continuous communication with the team in these times and motivating the team to perform at full strength;
- Brainstorming with the team on streamlining the process and ensuring compliances are managed on a timely basis.

While the government has initiated several relief measures in terms of providing liquidity, in its capacity, it is now up to the corporates to overcome these challenging times and emerge stronger. The key to success lies in the details; hence it's vital to analyze the government's relief measures as well as the existing law closely and identify as to how they can be implemented in one's case. This crisis once again reiterates the fact that more and more businesses would have to look at digitally transforming every function of their business so that disruptions like COVID-19 do not impact the business operations.

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