

Global Tax Update

India

Deloitte Tohmatsu Tax Co.

December 2020

1. Extension of due date for furnishing of income-tax return, audit reports, etc.

In view of the challenges faced by taxpayers in meeting the statutory and regulatory compliances due to COVID-19, the Central Board of Direct Taxes (CBDT) has issued notification dated 29 October 2020, to notify the extension of due date for furnishing of income-tax return¹ and various audit reports for financial year 2019-20.

Class of Tax Payer			Current due date	Revised extended due date
A	Income-tax return compliance for FY 2019-20			
	1	Taxpayer being company	30 November 2020	31 January 2021
	2	Taxpayer, other than A1 above, who are required to get their accounts audited under ITA or any other law for the time being in force	30 November 2020	31 January 2021
	3	Taxpayer being partner of a firm whose accounts are required to be audited under the ITA or any other law for the time being in force	30 November 2020	31 January 2021
B	Taxpayer who is required to furnish a transfer pricing report in Form No. 3CEB (relating to international / specified domestic transactions)		30 November 2020	30 November 2020
C	Furnishing of various audit reports under the ITA (including tax audit report and report in respect of international / specified domestic transaction)		30 November 2020	30 November 2020

Note: The due date for filing belated/revised return for FY 2018-19, continues to be 30 November 2020

2. GST e-invoicing goes live from 1 October 2020, with certain relaxation

GST e-invoicing went live from 1 October 2020 for companies with gross turnover exceeding INR 5 billion during any of the financial years 2017-18 onwards. The government also announced relaxation for invoices issued in the period from 1 October 2020 to 31 October 2020.

GST e-invoicing requires eligible taxpayers to obtain a unique Invoice Reference Number (IRN) from the government-nominated Invoice Registration Portal (IRP), for every B2B and export invoice issued by them from 1 October 2020. Debit notes and credit notes are also covered under the e-invoicing mechanism. B2C invoices and certain specific taxpayers such as banking companies, financial institutions, non-banking financial companies, insurance companies, goods transport and passenger transport service providers, exhibitors of cinematograph films in multiplex screens and units in special economic zones, have been kept outside the purview of e-invoicing.

As a measure of relaxation, the government also announced that eligible taxpayers who are not able to generate an IRN for invoices issued during 1 October 2020 to 31 October 2020, can comply with the requirement within 30 days of the

¹ under the Income-tax Act, 1961 (ITA)

date of the invoice. The requirement to have dynamic QR code on specified B2C invoices has been kept in abeyance up to 30 November 2020.

3. Penalty on non-resident entity for not maintaining Transfer Pricing (TP) study

A non-resident taxpayer has to maintain its own TP study and cannot rely on TP study of its Indian Associated Enterprise. In a recent decision, the Delhi Tribunal held that it is mandatory for all taxpayers to maintain necessary documentation as provided for in Section 92D of the ITA. Further, it held that no exception/exemption whatsoever has been provided to non-resident taxpayers from maintaining their own TP documentations. The Tribunal also held that relying on supporting documents of the Indian Associated Enterprise (AE) may not be sufficient.

4. Dividend distribution tax cannot exceed the tax treaty rate

The decision of the Delhi Tribunal relates to the period prior to 1 April 2020 when Indian companies were required to pay Dividend Distribution Tax (DDT) under the domestic tax laws at the rate of 15% plus surcharge and education cess, and the dividends were not taxable in the hands of the shareholders. The Tribunal rendered its decision that dividend distribution tax cannot exceed the rate for taxation of dividend as specified under Articles of the tax treaty in respect of dividend paid to shareholders. This decision was in the case of a German shareholder. The treaty rate for taxation of dividends is generally around 10% for various countries, including Japan.

This ruling should provide relief in case of dividends paid to residents of Germany and of other countries with tax treaties similar to that with Japan. However, while relying on this ruling, one should note that the India-Japan tax treaty was entered into prior to the introduction of DDT, initially vide Finance Act 1997, which is one of the points considered by the Tribunal while arriving at the said conclusion. There are also other considerations such as beneficial ownership, existence of a permanent establishment, etc. which need to be kept in mind.

5. CBDT notifies, amends timelines under Direct Tax Vivad se Vishwas Act, 2020

The government had enacted the 'Direct Tax Vivad se Vishwas Act, 2020' (VsV Act) on 17 March 2020, to reduce pending income-tax litigation, generate revenue for the government and benefit taxpayers by providing them peace of mind, certainty and savings on account of time and resources that would have been spent on the litigation process.

The VsV Act offers to the taxpayer, waiver from certain interest and penalty, (as provided under the VsV Act) on payment of certain minimum amount (as provided under the VsV Act). At the time of enactment of the VsV Act, an additional amount (i.e. in addition to the minimum amount) was required to be paid if the taxpayer made the payment after 31 March 2020. The date was extended to 31 December 2020. Separately, as per section 5(2) of the VsV Act, the taxpayer is required to make payment of minimum amount within a period of 15 days from the receipt of certificate from the designated authority under section 5(1) of the VsV Act.

The Central Board of Direct Taxes (CBDT) has now issued the following notifications:

- Notification dated 27 October 2020 to notify the last date for filing a declaration under the VsV Act in respect of the tax arrears and the last date for payment of minimum amount.
- Notification dated 28 October 2020 to remove undue hardship faced by the taxpayer pursuant to section 5(2) of the VsV Act.

Highlights of the notification are as under:

- Taxpayers can file by 31 December 2020, a declaration in respect of tax arrears (as per the provisions of section 4 of the VsV Act) with the designated authority.
- The timeline for payment of minimum amount has been extended to 31 March 2021. An additional amount will be payable if the payment is made after 1 April 2021.
- It has been clarified that where a declarant (i.e. taxpayer) files a declaration under the VsV Act on or before 31 December 2020, the designated authority (while issuing certificate under the VsV Act) would allow the declarant to make payment of minimum amount by 31 March 2021.

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