

IS YOUR OVERSEAS PARENT / GROUP COMPANY TAX COMPLIANT IN INDIA?

Under the existing provisions of the Indian Income-tax Act (IT Act), every foreign company is required to submit an annual corporate tax return in respect of incomes earned in India. These incomes are generally in the nature of royalties, technical / supervision / installation fee, management fee, interest, cost contribution arrangements, sale of goods etc. received by such foreign company from related & unrelated entities in India and are subject to withholding tax (WHT) at source.

In most of these cases, the annual corporate tax filing is a mere declaration of business transacted in India i.e. typically in cases where income accrues from royalties, technical fee, management fee, interest etc., income is reported, credit of WHT is claimed against the final tax liability and balance tax is paid or a refund claim is lodged. However, those involving an element of continuity / permanency in operations eg. long term (generally >6months) supervisory, engineering, installation contracts, sales team visiting for longer durations etc., the aspect of Permanent Establishment (PE) may become relevant and thus a deeper analysis of IT Act as well as the bilateral tax convention (DTAA) is necessary to draw a final tax computation.

Non-compliance to tax filing and other requirements leads to potential interest and penal consequences. The impact gets snowballed if related parties are involved and Transfer Pricing (TP) compliances are also applicable. In absence of proof of tax filing, the foreign company may also face challenges in seeking tax credits in the home jurisdiction.

In the recent past, the tax authorities have made enquiries and also concluded adverse tax assessments against defaulting foreign companies as well as their Indian counterparts (as representative assessee). Therefore, and keeping in view the clear requirements under the IT Act, it is advisable that the foreign companies must submit a tax return in India on or before the due date. The tax return be accompanied by a TP compliance certificate where related party transactions are subject to tax in India.

If you have entered into transactions with foreign companies in the nature indicated earlier in this note, please reach out to your tax advisors. Besides correctly evaluating the tax situation, this can guide the foreign company in meeting its tax compliances viz. obtaining Permanent Account Number (PAN), Digital Signature Certificate (DSC), planning & submitting the annual tax returns and also address any notice or enquiry that has been raised by the tax authorities in this regard.



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