Has the Falling Rupee Sweetened 'Vivad Se Vishwas' Scheme for MNCs ?

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There is no denial that the Government of India is taking all efforts to improve the 'Ease of Doing Business' in the country, especially for MNCs. In this regard, it has rolled out a direct tax dispute resolution scheme titled 'Vivad se Vishwas' scheme (**"VSV Scheme"**) for taxpayers who have pending tax disputes at any appellate forum in India. The biggest benefit of this scheme is that if the taxpayer pays the disputed tax amount before the prescribed date, then, there is complete waiver from penal interest / penalty and potential prosecution. With such attractive monetary benefits, the VSV Scheme is surely a lucrative option for those litigating taxpayers who are not very strong about either the merits of their case or about the chances of success.

Accordingly, many taxpayers (especially the corporate taxpayers) have started taking stock of their pending tax disputes to evaluate the pros and cons of the VSV Scheme. Some factors which are being considered by taxpayers to determine whether to opt for the VSV Scheme are:

- *Merits of the tax dispute and / or chances of success*: If a taxpayer is not strong on either of these points, then, the VSV Scheme is worth consideration. While there is no standard thumb rule or guiding principle in this assessment, but, the possibility of success being less than 50% could be a good guiding factor in evaluating this scheme to put an end to pending litigation;
- *Cost benefit analysis / how old is the tax dispute*: One of the most attractive features of the VSV Scheme is that if the taxpayer pays the disputed tax amount before the prescribed date, then, there is complete waiver from inter alia penal interest. For tax disputes which have been pending for many years now, the penal interest component can sometimes be more than the disputed tax amount itself. Hence, taxpayers may also undertake a 'cost benefit analysis' to calculate the saving of substantial interest if they were to opt for this scheme;
- *Cash flow position*: Since the benefits of the VSV Scheme would be available only if the disputed tax amount is paid before the prescribed date, taxpayers will also need to consider their cash flow position in their evaluation of the participation in the VSV Scheme. Given the unfortunate COVID-19 outbreak and the consequent desire of taxpayers to hold on to and retain as much liquidity as possible, this is also a very vital factor;
- *Time value of money, litigation cost and peace of mind*: While undertaking this assessment, a taxpayer will also need to keep in mind the time value of money. This is because while opting for the VSV Scheme will give peace of mind and save potential litigation costs, it will require a taxpayer to make tax payment today; and
- *Whether there are any unabsorbed tax losses*: For taxpayers with unabsorbed tax losses, the VSV Scheme has one more customised feature. If such taxpayers want to participate in the VSV Scheme, they can do so without any cash outflow for tax payment.

These are some crucial factors which all taxpayers will need to consider while determining whether to opt for the VSV Scheme. But, Indian subsidiaries of offshore entities (**"Indian Subs"**) should consider one more factor – the exchange rate of Indian Rupee. Interestingly, with the sharp fall in the value of Indian Rupee (around 10% fall in the last one year itself), the effective cost of participating in this scheme for Indian Subs has reduced. To illustrate: if the disputed tax amount in a pending appeal of an Indian Sub is INR 75, then, with an exchange rate of USD 1 = INR 75, the effective cost for Indian Sub to participate in this scheme today would be USD 1 and by doing so, it will be free from any interest levy. However, if such Indian Sub decides not to take the benefit of this scheme and if the Indian Rupee appreciates to USD 1 = INR 67.50 when its appeal gets decided against it, then, the effective tax cost for Indian Sub would be USD 1.11 (and penal interest).

It is rightly said that one person's loss is another person's gain. Hence, the Indian Subs should assess whether the fall in the value of Indian Rupee can be used to their advantage. This may also help them in offsetting (to some extent) any forex losses that they may incur on imports. It is also worth mentioning that now, the Government has extended the date for making tax payment under the VSV Scheme (without any interest) to 30 June 2020. Under the original scheme, if a taxpayer were to make payment after 31 March 2020, then, some additional amount of tax was required to be paid. This will also be a relevant factor for Indian Subs while determining whether to opt for the VSV Scheme.

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