

Mergers and Acquisitions tax

Keep yourself updated with the latest deals – Example - Air India

Link these recent deals with the background from where they started – What were the bottle necks ?

There are different rules for listed and unlisted companies

Think from the shareholder point – What will they think?

What does Companies Act'2013 and Income-tax Act say about the definition of merger, amalgamation, acquisition, takeovers

Think if you have to take over a company –How will you do it ? – Open Market buy, Agreement with majority shareholders etc.

Think about the assets and liabilities

Slump sale – Be familiar of new slump sales rules – Rule 11UAE – FMV

First question in the interview can be – Have you read Bharat Bijlee case and how it has been impacted by the amendments made by Budget 2021

Mergers and Acquisitions tax

Demerger and relation with sick units

Stamp duty – It is different in each state – Which state ?

Ways – Asset sale (Itemised sale), Business sale, share sale

Please brush the taxability of AOPs

Section 47 of the Income-tax Act

Conversion of company into LLP

NCLT – Is NCLT approval required in all M&A deals – No!

Be familiar with Securities law, take over code

Cross border merger – Can Indian company merge with the foreign company?

Competition law – Definition of combination, concept of appreciable adverse effect on competition (“AAEC”) in India, Financial thresholds – India asset test, Global asset test etc.

Exchange control x M&A

NDI rules - Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (“Non-Debt Instruments Rules”)

What is FDI ? – Equity investment

Is FDI and Foreign Investment – Same ? – No!

Check sectoral caps

Automatic route or Approval route

FPI ?- 10% threshold

Rules for Non-residents – Example – Can a PROI invest in LLP ?

What about investments in Nidhi company – No! Check for prohibitions

Exchange control

ODI Scheme - Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 (“ODI Regulations”)

LRS Scheme – For Individuals (2.5 Lakh USD) – Why

NRO/NRE ACCOUNT – 1 million USD limit (NRO)

International tax

Capital gains – Must !

Section 9 – Business connection, Royalty, Interest, FTS

Indirect transfer provision – 100 million threshold, substantial value derived from Indian assets

What is direct transfer – Is it taxable – Yes!

Section 47

Implications of capital gains on slump sale

Implications of capital gains on itemized sale

Section 79 – Carry forward of losses – Remember ! 51% change in shareholding

International tax

Article 5 – Types of PE, Preparatory and auxiliary activities, Formula 1 ruling, place of disposal etc.

Article 7

Fiscally transparent entities

Opaque entities

Royalty

Fees for technical services – Managerial, consultancy and technical services – Make available clause

What is FIS ?

Residential status

International tax

Equalisation levy

Significant economic presence

OECD pillar 1 and 2

G7 tax proposal

Crypto

Online gaming

Intangibles

Work from home and PE exposure

International tax x BEPS/MLI/PPT

BEPS – why?

MLI – effect on PE definition

PPT – What is it?

How is PPT different from domestic GAAR of India?

Classic Example – 365 days condition in case of dividend

What is the importance of beneficial owner? – Developments across the globe

Trusts

Section 90 – Amendments in alignment with MLI regime

Transfer Pricing

Background

Why it came?

If two country tax rates are same – How can we say that profits have been shifted ?- Value chain

Risks and Rewards commensurate to the value added by each entity

Margin calculation – Only operating items to be considered

Methods of TP and utilities

Two twin brothers – Can you apply CUP?

OECD guidelines on COVID and Transfer pricing

Transfer Pricing

No comparable – what to do?

FAR analysis

Master file and country by country reporting

BEPS AP 13 – Threshold 750 million euros

Tested party

AMP – Intangibles

GRATITUDE

Yeeshu Sehgal is a Chartered Accountant and an associate member of The Institute of Chartered Accountant of India (ICAI). He has authored various articles on International tax related topics which have been published on widely accessed professional websites like taxsutra, India tax forum, taxguru, linkedin etc. He has been actively contributing through writing about latest developments in International tax space in ICAI NIRC regional branches newsletters such as Faridabad branch, Jaipur Branch etc. He has been a regular speaker on several international and national seminars with audiences from US, UK, Nigeria, Bangladesh, Russia etc. He has spoken at Faridabad Branch of NIRC of ICAI as well on International tax practice for beginners.

He has a strong passion and respect for International tax as a work area and at the same time aim to empower his CA, Lawyer, MBA or friends from other walk of life to stay confident and make International tax a part of their life. He has received a creator mode on linkedin as well.

He has done his graduation in B.com(Hons.) from Shaheed Bhagat Singh College (M) and also worked with big4 firms to top tier firms in India during his articleship and even post qualification. At present, he is working in transaction advisory services (part of International tax advisory) at one of the top consulting firms in India.

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