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TAX MATTERS

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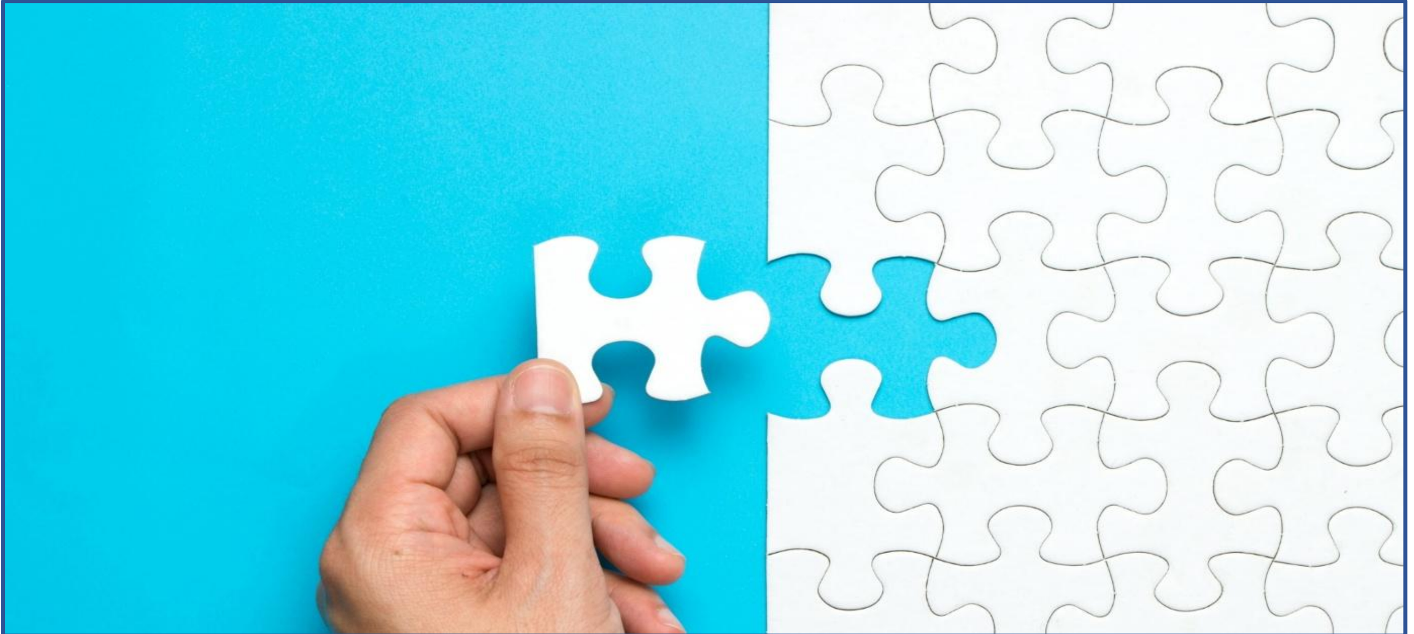

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DID YOU KNOW?

Key amendments w.e.f. 1 April 2026 in connection with the mandatory requirement of quoting PAN are:

- PAN is no longer required to be quoted for cash deposits or payments exceeding INR 50,000 in a day. Annual threshold for cash deposits has been revised from INR 250,000 to INR 10 lac;
- Quoting PAN is now mandatory for annual cash withdrawals exceeding INR 10 lac;
- The threshold for quoting PAN in immovable property transactions has been increased from INR 10 lac to INR 20 lac;
- PAN is no longer required for cash payments made towards foreign travel or purchase of foreign currency.

The team at JMP Advisors is pleased to bring to you a gist of some of the significant developments in the direct tax space during April 2026:

Income tax rulings

- **Applicability of DTAA to Dividend Distribution Tax - Bombay High Court refers controversy to Larger Bench**

- Foseco India Ltd vs ACIT[1]

The taxpayer, an Indian company distributed dividends to its shareholders who were residents of United Kingdom ('UK') during Financial Years ('FY') 2013-14 to 2019-20 and paid Dividend Distribution Tax ('DDT') in accordance with section 115-O of the Income-tax Act, 1961 ('the Act'). The taxpayer contended that since the dividend recipients were residents and beneficial owners under the India-UK Double Taxation Avoidance Agreement ('DTAA'), the DDT liability ought to have been restricted to the rate specified in Article 11 of the India-UK DTAA.

Accordingly, the taxpayer filed refund applications under section 237 of the Act seeking refund of the DDT paid in excess of the treaty rate. The Revenue authorities rejected the refund claims holding that DDT is an additional income-tax payable by the domestic company under section 115-O of the Act and not a tax on the dividend income of shareholders. Consequently, the India-UK DTAA provisions dealing with taxation of dividends were held to be inapplicable.

The Commissioner of the Income-Tax (Appeals) ('CIT(A)') as well as the Mumbai Income-tax Appellate Tribunal ('Mumbai ITAT') upheld the Revenue's stand by relying substantially on the Special Bench ruling in *Total Oil India Pvt. Ltd.*[2], wherein it was held that DDT is a tax on the distributing company and not on the shareholder and therefore treaty relief is unavailable unless specifically provided in the treaty. Aggrieved by the orders, the taxpayer filed an appeal before the Hon'ble Bombay High Court ('HC').

Before the HC, the taxpayer contended that DDT under section 115-O of the Act was, in substance, a tax on dividend income of the shareholders, though the incidence of collection had merely been shifted to the distributing company for administrative convenience. It was argued that section 115-O of the Act only altered the mechanism for collection of tax and did not change the intrinsic character of the levy. Accordingly, where the dividend recipients were tax residents of the UK and were the beneficial owners of such dividend income, Article 11 of the India-UK DTAA restricted the applicable tax rate on such dividends.

The taxpayer further submitted that DDT constituted 'tax' within the meaning of sections 2(43) and 4 of the Act and therefore fell within the ambit of Section 90 of the Act and the applicable DTAA provisions. Reliance was placed on the decision in *Colorcon Asia Pvt. Ltd.*[3], wherein it was held that treaty rates under the applicable DTAA would apply while computing DDT liability.

The Revenue contended that section 115-O of the Act creates an independent charging provision imposing additional income-tax on the domestic company distributing dividends. According to the Revenue, DDT is a tax on the

[1] ITA No. 1123 of 2025
[2] ITA No. 6997/Mum/2019
[3] TS-1623-HC-2025(BOM)

profits of the company and not on dividend income in the hands of shareholders. It was argued that the domestic company discharges its own statutory tax liability while paying DDT and does not act as an agent or representative assessee of the shareholders. The Revenue further submitted that during the DDT regime, dividend income was exempt in the hands of shareholders under section 10(34) of the Act and therefore the provisions of the applicable DTAA dealing with taxation of dividend income could not be invoked.

In support of its contentions, the Revenue relied upon the Hon'ble Bombay HC decision in *Godrej & Boyce Manufacturing Co. Ltd*.[4] as well as the Special Bench ruling of the Mumbai ITAT in *Total Oil India Pvt. Ltd.(supra)*, wherein DDT was characterised as a tax on the distributing company. The Revenue additionally argued that wherever the contracting states intended treaty protection to extend to DDT, such protection was specifically incorporated in the treaty itself, such as under the protocol to the India-Hungary DTAA. Accordingly, the absence of any similar provision in the India-UK DTAA clearly indicated legislative intent to exclude DDT from the scope of treaty protection.

The HC observed that section 115-O of the Act begins with a non-obstante clause and imposes an additional income-tax on profits declared, distributed or paid by a domestic company by way of dividends. It further noted that sub-sections (4) and (5) of section 115-O of the Act provide that the tax paid by the company is treated as a final payment of tax and that neither the company nor the shareholders are entitled to claim any credit or deduction in respect of such tax. Accordingly, prima facie, the levy appeared to be a tax borne by the company itself and not a tax paid on behalf of shareholders.

The HC further observed that the Supreme Court ('SC') in *Godrej & Boyce Manufacturing Co. Ltd*.[5] had accepted the position that DDT is a tax on distributed profits of the company and not on dividend income in the hands of shareholders, thereby casting doubt on the contrary view adopted in *Colorcon Asia Pvt. Ltd. (supra)*. The Hon'ble Bombay HC also noted that treaty protection generally applies to taxation in the hands of residents of the contracting states and since DDT is paid by an Indian resident company in discharge of its own liability, the applicability of Article 11 of the DTAA becomes debatable. However, considering the conflicting judicial views, particularly the contrary ruling in *Colorcon Asia Pvt. Ltd.*, (supra) the Hon'ble Bombay HC held that the issue requires authoritative determination by a Larger Bench.

JMP Insights *- This ruling is significant in the long-standing controversy of whether DTAA relief can be claimed in respect of DDT. Although the Bombay HC has not delivered a final ruling on merits, its observations indicate a prima facie inclination towards the view that DDT is a tax on the domestic company and not on shareholders.*

At the same time, the HC has acknowledged the conflicting judicial position arising from Colorcon Asia Pvt. Ltd. and referred the issue to a Larger Bench for authoritative determination. The Larger Bench ruling is expected to have substantial implications for pending DDT refund claims and treaty-based litigation involving concessional dividend taxation provisions under various DTAAs.

Further, the SC has also framed substantial questions of law in the applicability of DTAA to DDT and listed the matter for hearing. The SC proceedings are expected to provide final judicial clarity on whether DDT constitutes a tax on distributed profits of the company or a tax on dividend income paid on behalf of shareholders,

[4] [2010] 194 Taxman 203 (Bombay)

[5] [2017] 81 taxmann.com 111 (SC)

which may significantly impact pending refund claims and cross-border dividend taxation disputes.

- **Virtual service taxability remains open; withholding relief follows past assessments;**

  - Benteler Automative (China) Investments Limited vs Asst. Commissioner of Income Tax & others[6]

The taxpayer is a Chinese tax resident and part of the Benteler Group providing management, technical and support services to its Indian subsidiary company. The taxpayer had consistently applied for a NIL withholding certificate in the past years. The tax officer has rejected the claims and has taxed the income received from the Indian subsidiary company. The matter has been pending with the Mumbai Income Tax Appellate Tribunal ('Tribunal') for adjudication.

The taxpayer has applied for a NIL withholding certificate for FY 2025-26, which was rejected by the tax authorities primarily on the basis that similar income was taxable in previous years. The taxpayer filed a Writ petition before the Bombay High Court ('HC') against the rejection order of the NIL withholding certificate.

The taxpayer argued that payments received from Indian subsidiary do not qualify as FTS as per Article 12 of India China DTAA. It stated that interpretation of Article 12 along with Article 5(k) of India China DTAA imply services to be rendered in India and not merely utilised in Inda in order to be taxable. Since all the services are rendered from outside India through virtual means such as emails, video conferencing and calls, the condition for rendering services within India is not satisfied to classify such services as taxable. The taxpayer also relied on the circular issued by the Chinese State Tax administration to support its interpretation of the treaty wherein it indicated taxability as FTS only where non-resident personnel performance services while being in India.

The issue raised before the HC involved taxability under India China DTAA, particularly in case of services rendered virtually through calls and emails. The HC observed that mere fact that services were provided to an Indian entity through virtual means would not justify the conclusion that such services were physically rendered in India. The HC emphasized that, in the absence of any explicit provision in law or the DTAA, virtual interaction cannot be equated with territorial presence. The HC clarified such an interpretation by the tax authorities to be legally unsound and overly expansive, particularly in the context of modern digital business models.

Given that the issue was already pending before the ITAT, the HC limited its consideration to the validity of the rejection of the NIL withholding certificate application and left the question of treaty applicability to be adjudicated by the Tribunal.

On the issue of the NIL withholding certificate, the HC observed that the domestic tax provisions require the tax officer to consider past assessments, existing tax liability and consistency in approach. The HC noted that the tax officer and the higher authorities have consistently held the income of the taxpayer from similar services taxable in India. The HC concluded that the tax officer had acted correctly in relying on past adverse decisions and refusing to issue a NIL withholding certificate.

***JMP Insights** – The HC has confined its judgement and has not ruled on the applicability of treaty benefit on the income received from Indian subsidiary.*

However, the ruling has significant implications specifically for virtual or digitally delivered services. The HC's observation marks an

[6] Writ Petition No 11074 of 2025

important shift away from the tax officer's approach of linking taxability to the location where services are consumed. Instead, the HC emphasizes that the mode of delivery being digital does not change the underlying requirement of determining the actual place where services are performed, particularly with regard to India China DTAA where the services are to be rendered in the other contracting state.

The ruling highlights that in the era of digital business models, virtual service delivery by itself does not establish taxability in India. Tax authorities must still satisfy the specific conditions laid down in the DTAA in order to tax income in India.

➢ Taxability of cost-to-cost salary reimbursement in secondment cases

- Goldman Sachs International vs ACIT[7]

The taxpayer, a company incorporated in the United Kingdom, had seconded employees to its group companies in India during FY 2023-24. Under the secondment arrangement, part of the salary of the employees' was paid by the group companies in India, while the remaining salary was paid by the taxpayer outside India for administrative reasons such as continuity of social security benefits. The portion of salary paid by the taxpayer was reimbursed by the group companies strictly on a cost-to-cost basis without any markup, with the full salary cost being recognised as a payroll expense in the books of account of the group companies.

The tax officer treated the reimbursement of salary received by the taxpayer as Fees for Technical Services. The tax officer observed that the seconded employees continued to remain employees of the taxpayer since they returned to overseas employment after completion of the secondment. It was further held that the absence of any markup did not alter the character of the receipt and that the employees rendered technical, managerial and consultancy services, thereby making available technical knowledge to the group companies. Accordingly, the tax officer held that the amount received by the taxpayer from the Indian companies was taxable under Article 13(5) of the India-UK DTAA. This was further confirmed by the Dispute Resolution Panel.

On appeal to the Mumbai bench of the Income Tax Appellate Tribunal ('Tribunal'), the taxpayer submitted that the seconded employees worked exclusively under the control and supervision of the Indian group companies, which determined all terms of employment, including remuneration and tenure. It was further submitted that tax was deducted by the Indian companies on the entire salary, including the portion paid outside India. Accordingly, the Indian group companies were the legal and economic employers. The taxpayer therefore contended that it had not rendered any services to the Indian entities.

The Tribunal noted that the issue stood squarely covered by decisions of the co-ordinate bench of the Bangalore Tribunal in the taxpayer's own case[8] as well as in the case of Goldman Sachs Services Private Limited, which had since been upheld by the Karnataka High Court[9]. Relying on these rulings, the Tribunal reiterated that the decisive test in secondment arrangements is the existence of an employer-employee relationship. Applying the settled principle that where the Indian entity is the economic employer and the payments represent reimbursement of salary without any profit element; such payments cannot be characterised as Fees for Technical Services. The Tribunal therefore held that the

[7] ITA No. 6033/Mum/2025
[8] ITA Nos.564 and 565/Bang/2024
[9] INCOME TAX APPEAL NO. 128 OF 2024 (Karnataka HC)

reimbursement of salary paid to seconded employees was not chargeable to tax in India.

***JMP Insights** – Secondment arrangements have been a subject matter of tax disputes for long.* Outcomes such *tax disputes are driven equally by contractual terms and by the quality of contemporaneous documentation. Taxpayers should ensure that secondment agreements, HR policies and payroll records consistently demonstrate that the entity to which personnel are seconded exercises day-to-day control over secondees and bears full responsibility for employment terms. It is equally important that inter-company agreements clearly reflect cost-to-cost reimbursement mechanics, with no embedded service element and such positions are also aligned with the tax withholding.*

- **Corporate Laws (Amendment) Bill, 2026**

The Corporate Laws (Amendment) Bill, 2026 ('Bill'), introduced in the Lok Sabha on 23 March 2026, proposes reforms to the Companies Act, 2013 and Limited Liability Partnership Act, 2008 to improve ease of doing business, modernize compliance processes and strengthen corporate governance through a more risk- and outcome-based regulatory approach.

The Bill has been referred to a Joint Parliamentary Committee for detailed review and stakeholder consultation before being reconsidered by Parliament for implementation.

Some key amendments proposed by the Bill are as follows:

- The definition of a 'small company' is proposed to be expanded by increasing the eligibility thresholds as under:
  - Paid-up capital cap from INR 100 million to INR 200 million; and
  - Turnover cap from INR 1 billion to INR 2 billion
- It is proposed to provide that all companies shall hold at least one physical AGM in every three years.
- It is proposed to provide that EGMs may be conducted wholly through virtual mode by giving a minimum notice of at least seven days or such other period as may be prescribed.
- Board meeting requirements for small companies, one-person companies and dormant companies are proposed to be relaxed, requiring only one Board meeting in a calendar year.
- It is proposed that the auditor or audit firm of prescribed class or classes of companies shall not provide, directly or indirectly, any non-audit services to the company or its holding company or subsidiary. It is further proposed that such restriction shall continue for a period of three years after completion of the audit term.
- The Bill proposes several changes to the buy-back framework, including:
  - Inclusion of shares issued under a scheme linked to the value of the share capital of a company within the buy-back regime;
  - Power to prescribe buy-back limits beyond the existing 25% threshold to certain class of companies;
  - Permission for certain companies to undertake upto two buy-backs within a year, subject to a prescribed gap of six months;
  - Removal of the requirement to verify the declaration of solvency by way of an affidavit.

- To facilitate operations in International Financial Services Centre ('IFSCs'), the Bill proposes the following requirements:

    - Companies to be permitted to issue and maintain share capital in any permitted foreign currency; and
    - To maintain books of account and other relevant accounting records in any permitted foreign currency.

- The threshold for applicability of Corporate Social Responsibility ('CSR') provisions based on net profit is proposed to be increased from INR 50 million to INR 100 million (or such amount as may be prescribed).

- Eligibility for voluntary strike-off is proposed to be expanded to include, inter alia, inactive companies that have not carried out any significant accounting transactions during the last two FYs and the current FY and also companies that have failed to file financial statements or annual returns for two consecutive FYs.

- It is proposed that a company's name may be removed from Register of Companies, if it has defaulted in statutory filings of financial statements or annual returns for two consecutive financial years.

- Mandatory professional certification for incorporation of companies/LLPs is proposed to be dispensed with, unless a professional was engaged for the purpose of the incorporation process.

- In case of many routine non-compliances, it is proposed to substitute fines/prosecution with a civil penalty.

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Should you wish to discuss any of the above issues in detail or understand the applicability to your specific situation, please feel free to reach out to us on coe@jmpadvisors.in.

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JMP Advisors offers advice in international taxation, domestic taxation, transfer pricing, mergers and acquisitions, Goods and Services Tax (GST), business laws and exchange control regulations and foreign investment consulting. We specialize in fiscal strategy, policy foresight and advocacy matters and are trusted advisors to high net worth families. Our team at JMP Advisors takes pride in being the best at what matters most to clients - technical expertise, innovative solutions, consistent, high quality service, reliability and ease of doing business.

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