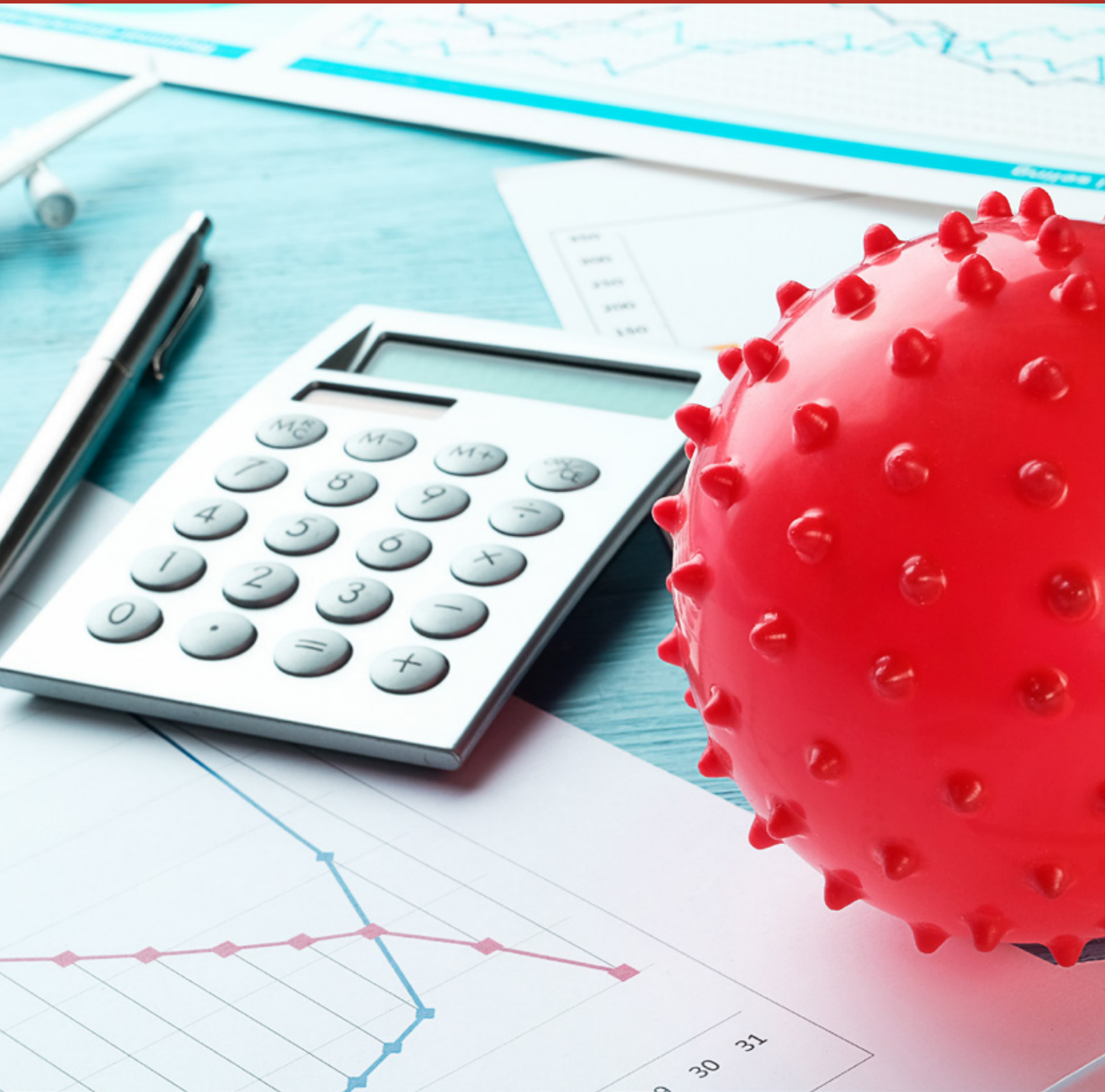


# NAVIGATING TAXES DURING COVID-19



## PREFACE

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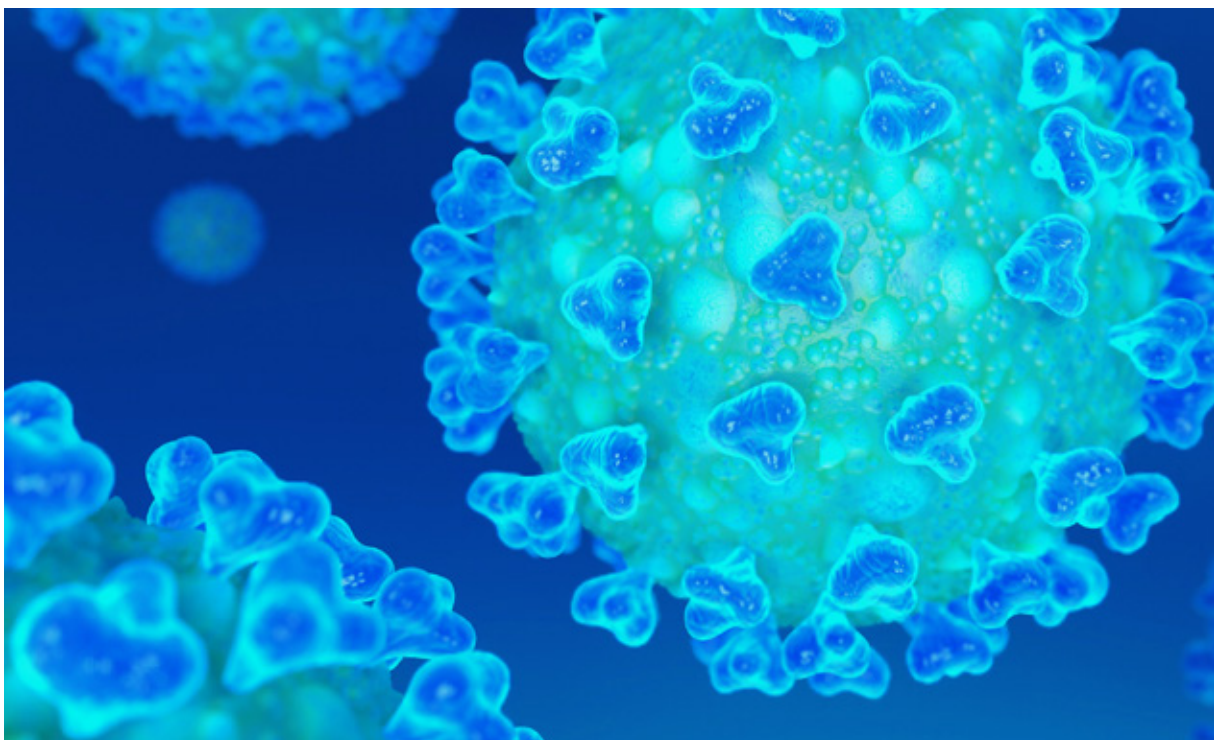
The COVID-19 pandemic has created an unprecedented disruption to the world economy and public at large. We have seen some of the world's most advanced countries with fairly advanced healthcare systems getting battered by the pandemic. Cities and countries under lock down, oil prices seeing levels not tested in the last decade, travel ban, borders being sealed, sports events being cancelled, volatile markets... and we still do not know how much pain remains in store. While a fully tested remedy is still elusive, estimates vastly vary on the how soon things will stabilise and we could see recovery gain momentum. Many countries have already announced a downward projection in their growth estimates, some economies are clearly in a negative zone and world on the cusp of a recession. Whilst these are early days for India, Moody's has already lowered India's GDP forecast for the next financial year to 2.5 per cent and yet India may be one of the world's fastest growing economies.

Whilst on one hand we have positive measures from the Government easing some of the regulatory restrictions, pushing back the timelines for filings and payment of taxes, announcement of ~ USD

22.5 billion economic stimulus package (additional stimulus package possibly in the works); on another hand we have reports wherein many assesses have been at the receiving end of relentless chase by tax officials for payment of outstanding tax demands.

Amidst the prevailing uncertainty, redefining our approach towards taxes and their compliance becomes very relevant. This document intends to cover some of the key tax aspects which businesses ought to be watchful of and proactive about. When we started piecing this document, a few initial thoughts which seemed a trickle eventually became quite a handful - be it cash flow management and its interplay with tax, revisiting current transfer pricing arrangements, new opportunities and impact on existing M&A deals, international tax aspects, etc. While these are early days, being at the forefront of various opportunities that these can throw up will surely help businesses stay ahead in such critical times. We are sure you will find this useful.

We look forward to your comments and thoughts, and as always, we will be glad to help your business navigate through these uncertain times.



## DIRECT TAXES

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### Optimizing tax cash flows

- Optimising effective tax rate, through a sharper and focussed relook at various claims that can be made in pending assessments or appellate proceedings, keeping in mind the recent judicial precedents and developments
- Evaluating the concessional tax regime and relooking at existing corporate structures and need for potential restructuring
- Evaluating whether to opt for the Vivad Se Vishwas (VsV) scheme for settlement of tax disputes and likely refund of interest and penalty if already paid in the past – timeline for VsV scheme extended till 30 June 2020 without any additional cost
  - Opting for VsV scheme could facilitate faster processing of tax refunds and hopefully these can come in handy during these uncertain times
- Need to revisit the business and cash flow projections for FY 2020-21 and performing simulations and scenario analysis on a case to case basis to arrive at projected tax liability and quantum of advance tax payable every quarter starting from June 2020
- Evaluating the quantum of tax refunds (principal plus interest) due from the Government and options which can be explored for early issuance of the same
- Leveraging on existing Nil / lower withholding tax certificates for remittances (in India and outside India) till June 30, 2020 (given the relaxation provided by the CBDT).
- Changes to existing supply chains and newer approaches / refinements to current business models may have relevant tax implications that need to be thought through
- Applying for a lower / Nil withholding tax certificate for FY 2020-21 for better working capital management
- Fast tracking pending litigations at various forums where significant relief is possible leading to release of demands paid up

- Meeting the mandatory 2% CSR obligation through spending on relief measures in light of COVID-19

### Tax Positions – COVID-19 impact

- Analysing the tax impact on account of the following measures which may be adopted by companies and/ or auditors on account of COVID-19:
    - Impairment of non-financial assets (Property, Plant, Equipment, Intangibles, etc.)
    - Impairment / Write down of inventory, due to risk of obsolescence
    - Impairment of financial instruments (loans, debt instruments, etc.) and revision of estimates or provision for Expected Credit Losses
    - Provision for liquidated damages for any delays in contractually agreed shipments
    - Valuations of inventory and other current assets impacted by the business uncertainties
  - Recognition of losses on account of contracts which may have turned onerous and identifying the documents required to support such claims
  - Tax impact on cancellation of contracts (for instance, compensation for breach of contract – revenue vs capital receipt, write-off of advances, write off of Capital Work in Progress, etc.)
  - Tax impact of business discontinuance, business restructuring, if any
  - Potential impact on carry forward and set-off of tax losses
  - Impact of three months period for repayment of loans – deductibility of interest in current financial year
  - Tax impact of Voluntary Retirement Scheme for employees in case of downscaling of operations
  - Tax impact of other restructuring options that may be considered relevant
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## International tax considerations

- Evaluating the tax impact of all the aforesaid aspects for operating subsidiaries, branches and permanent establishments
- Evaluating whether any business or commercial decisions of foreign companies are taken by senior management personnel who are now in India and are remotely managing the overseas operations (Risk on account of Place of Effective Management being in India)
- Analysing whether business of a foreign enterprise is wholly or partly carried on in India through a fixed place – For instance, does home office constitute a Permanent Establishment?
- Evaluation of the holding and operating structure of various international subsidiaries to eliminate duplication, cost leakages, cash flow utilisation, etc.
- Impact on employee and employer taxability (in India as well as overseas) especially for cases involving cross-border deputation / secondment of employees

## Others

- Impact of potential extension of reporting years or tax years in one or more operating jurisdictions
- Impact of tax relief measures announced in other jurisdictions on the MNC Group
- Tax impact of Government assistance to a particular industry or business (in form of tax rebate or holidays, cash assistance, etc.)
- Relaxation of vesting conditions for employee stock options in light of potential adverse changes in economic climate
- Testing the 'going concern' principle especially for businesses which have significant exposure to US, China and other European markets
- 'Force majeure' clause and its impact on tax and financial reporting



## MERGERS & ACQUISITIONS

### Value proposition

- Valuation being at multi-years low, it is worth evaluating the following:
    - Identification and acquisition of stressed businesses / assets;
    - Consolidation within the industry;
    - delisting and exit to minority shareholders;
    - Closing out on open issues with the JV partner (including issues with respect to valuation, etc.)
    - Capital reallocation and improving ROCE through buy-back and returning cash to shareholders
    - Consolidating promoter stake – creeping acquisitions, buy-back, minority buyout, trigger of open offer due to low valuations, etc.
  - Evaluating benefits of M&A in a changed global scenario
  - Impact of technology especially in disruption scenarios like COVID-19 could be an important consideration
- Inter-company transactions to be evaluated
  - Group restructuring maybe cheaper from a tax and stamp duty perspective due to fall in valuations
- Evaluating restructuring to ensure ring-fencing wealth from failed businesses
  - Analysing possibility of debt restructuring through IBC or through tripartite arrangements between lenders, promoters and investors

### Value bargains in tough times

- On-going transactions, whether in evaluation, term sheet, signing or closing stage to examine from commercial perspective
  - Legal ramifications especially 'Force Majeure' to be considered for already signed agreements
  - Changes to agreed deal parameters basis the changes in the operating matrix as a result of recent events
  - Impact on deal cancellations, renegotiations, tighter indemnities, warranties, etc.

### Internal Restructuring

- Group consolidation to achieve tax benefits and economies of scale
- Evaluating overall surplus cash position within the group and how to mobilise the same



# TRANSFER PRICING

## Supply chain management

- Impact of current disruption on supply chain models
- Has the aforesaid impact (loss of efficiency/ inventory pile-up etc.) been quantified? If yes, can it be authenticated?

## Transfer pricing positions

- Position for annual TP compliance in the current year? Would any data be required from overseas entities (may provide an opportunity to break free from earlier compulsions)
- Revalidation of global TP policies?
- Use of comparables – does the situation warrant a change from existing set of comparables?

## Inter-group arrangements

- Renegotiation of long-term agreements with group companies for contract manufacturing/ service/ limited risk distribution etc. owing to slow-down. Important to ensure that any such renegotiation does not inadvertently tantamount to re-allocation of intellectual properties (e.g. contractual rights) amongst group entities.
- Need to revisit terms of intra-group loans & guarantees to factor moratoriums provided by banking institutions/ change in business circumstances
- Change in intra-group charge-out policy from change in time devoted by senior management to high priority jurisdiction/ augmenting access to online resources
- Exploring new entities as part of business continuity plan

## Advance Pricing Agreements (APAs)

- Should APA positions/ critical assumptions be revisited (or APAs be revoked in extreme cases)?
- Filing of new APAs or renewal of APAs which are in progress – Need for reconsideration?

## Others

- Exposure to Permanent Establishment from exodus of expats who continue to work from home for Indian companies (& vice versa)/ increase in role of local marketing support entity in concluding contracts during disruption
- Sensitise impact of increase in digitised marketing & advertisement (equalisation levy) and online sale channels (draft OECD Pillar One)



## SUCCESSION PLANNING AND FAMILY OFFICES

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- Exploring private family trust structures as an alternative to 'will' for succession and estate planning
  - Evaluating the types of trust (revocable or irrevocable / specific or discretionary / offshore or onshore)
  - Possible insulation against anticipated re-introduction of inheritance tax
- Evaluating various facets such as defining trustee lineage, decision-making matrix, policy for distribution of corpus and income of the trust, veto powers, exit conditionalities, etc.
- Considering offshore trust structures for families with foreign citizenships or where some family members are residing abroad
- Tax costs on migration of assets to the Trust
- Regulatory implications (SEBI Takeover Code, stamp duty, RBI approvals, etc.) to be evaluated thoroughly
- Exploring family constitution framework as a tool for succession planning





# INDIRECT TAXES

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## Key tax considerations

- Revisit Inter-company pricing policies and its impact on Customs and GST valuation. Revisit SVB order if change in economic circumstances
- Increase of pendency of litigation in courts. Option of early hearing to be evaluated
- Matching of credits on monthly basis not possible. Restriction / Reversal of credits to be factored from a cash flow perspective
- Impact of tax implications on additional receipts such as compensation received from parent, waiver from payment of royalty or any other amounts that are due, damages received for breach of contract from suppliers, write-off of advances for taxable supply or Government support or relief provided to any particular industry or of any other amounts of such nature
- Non-fulfilment of export obligation under various Foreign Trade Policy and the SEZ schemes Consider various reliefs and extensions granted by DGFT
- Impact of non-receipt of foreign currency within stipulated time, for exports
- Correspondence on non-filing or non-appearance due to Covid-19 situation. Reserve right for personal hearing and additional submissions
- Review of existing contracts for key tax clauses e.g. indemnity clauses for non-payment of GST, change in law or rate clause – passing tax incidence or benefit
- GST becomes cost in case of bad debts. In case where a contract gets re-negotiated for non-performance or partial performance, a GST adjustment can be taken
- Impact arising from suppliers / vendors going into IBC

## Optimizing tax cashflows

- Expedite filing of pending refund applications for exports and pursue pending ones
- Filing application for incentive schemes under the Foreign Trade Policy expeditiously for FY 2018-19 and FY 2019-20
- Revisit contracts to amend work completion or payment milestone specifically for continuous supply of services for customer and vendors
- Extension in due date for payment of taxes – interest @9% under GST vs. interest on bank loan

## Compliance related considerations

- Impact on Cash-flow arising from outstanding debtors
  - Relief towards cancellation of GST registration and non-issuance of e-way bill for non-filing of GST returns awaited
  - New provisions on physical verification within 60 days if Aadhar verification not possible. Impact on the ability to take credit till grant of registration
  - Registration to be taken by RP / IRP within 30 days of issuance of Notification
  - Extension of implementation of e-invoicing and the simplified returns to October 2020
  - Increased scrutiny / GST audit from tax authorities as soon as situation normalizes
  - GST Audit date and the Annual return filing date for 2018-19 extended to June 30
  - Pending Assessments under the Value Added Tax /Central Sales Tax regime
  - Impact of potential extension of the financial year on GST Audit, Annual return, etc.
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## About Dhruva Advisors

Dhruva Advisors is a tax and regulatory services firm, working with some of the largest multinational and Indian corporate groups. Its brings a unique blend of experience, having worked for the largest investors in India, advising on the largest transactions and on several of the largest litigation cases in the tax space. We also work closely with the Government on policy issues and with our clients on advocacy matters.

Key differentiators:

- Partner-led services
- Strategic approach to complex problems
- Specialized, in-depth, and robust advice
- Strong track record of designing and implementing pioneering solutions
- Trailblazers in tax controversy management
- Long history of involvement in policy reform
- Technical depth and quality

We believe in thinking out of the box, handholding our clients in implementing complex solutions and working towards achieving results. We have offices in Mumbai, Ahmedabad, Bengaluru, Delhi, Pune, Kolkata, Singapore and Dubai. We advise clients across multiple sectors including financial services, IT and IT-enabled services (ITES), real estate and infrastructure, telecommunications, oil and gas, pharmaceuticals, chemicals, consumer goods, power, as well as media and entertainment.

Dhruva Advisors is a member of the WTS Alliance, a global network of selected firms represented in more than 100 countries worldwide.

### Our recognitions

- Dhruva Advisors was recognised as the “Best Newcomer of the Year 2016 – ASIA” by International Tax Review at the Asia Tax Awards 2016
- Dhruva Advisors has been consistently recognised as “India Tax Firm of the Year” at the International Tax Review’s Asia Tax Awards - 2017, 2018 and 2019
- Dhruva Advisors has also been recognised as “India Disputes and Litigation Firm of the Year 2018” at ITR’s Asia Tax Awards, 2018
- Dhruva Advisors has been consistently recognised as a Tier 1 Firm in the International Tax Review’s World Tax Guide, World Transfer Pricing Guide and the Indirect Tax Guide.

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