M&As Meant to Avoid Tax to Face more Scrutiny

The Central Board of Direct Taxes (CBDT) and the ministry of corporate affairs (MCA) are getting their act together to ensure a strict vigil over mergers and amalgamations (M&A) to safeguard tax revenues.

M&A deals involving the proposed merger of a loss-making company into a profit-making entity to set off the loss and, thereby, reduce the tax liability of the corporate group, are likely to come under the glare of the regulators.

Through internal memos, both the CBDT and the MCA have geared up to strengthen the implementation of the existing regulations. In the administrative process outlined by the regulators in their internal memos, the MCA will ensure that the Income Tax (IT) authorities are informed of proposed M&A transactions within 15 days of receiving intimation from companies. If the I-T authorities find that the proposed M&A transaction is structured in a manner that it would be prejudicial to the interest of the revenue and thereby not in public interest, it will report its objection. The MCA will include this objection in the report filed by it with the jurisdictional high court.

Companies would be well advised to have a clear commercial rationale for their proposed restructuring schemes of merger or demerger. Schemes driven solely by tax objectives could be subject to far greater scrutiny and companies may need to be prepared to demonstrate the primary purpose of the scheme and be prepared for the consequential implementation delays, says Pranav Sayta, partner, EY.A terse instruction issued by the CBDT in its memo dated April 11,addressed to all chief commissions, calls upon I-T officials to respond to the MCA immediately on being notified of an M&A transaction.

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