



Foreign companies may attract penalties and prosecution proceedings for non-filing of a tax return in India

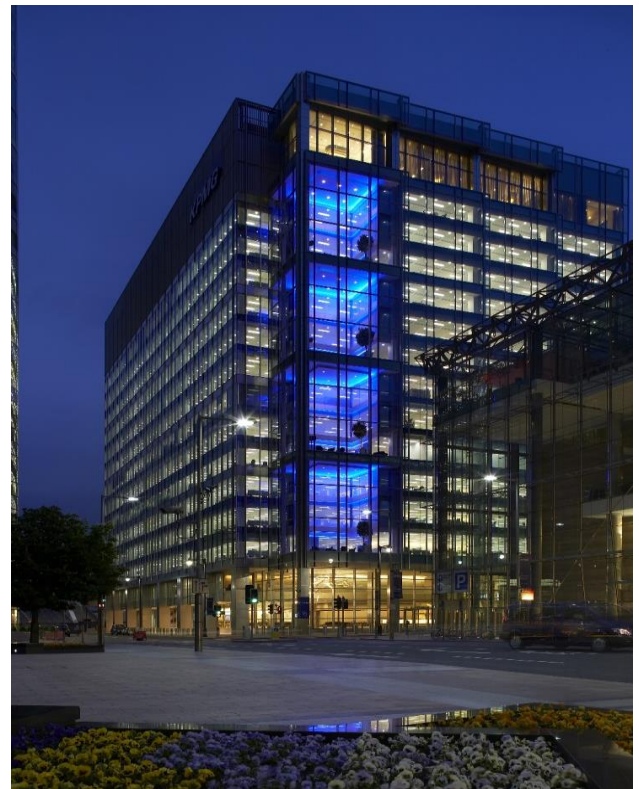
Under the Income-tax Act, 1961 (the Act), a company is mandatorily required to file its tax return in India on or before the specified due date¹. Generally, the provisions of the Act (including provisions dealing with the return of income) apply to a foreign company if it has a nexus with India. Earlier, a minimal penalty² was levied on failure to file a tax return in India.

The Finance Act, 2016 introduced the provisions³ in the Act for levy of penalty for under-reporting and misreporting of income with effect from 1 April 2017⁴. As per these provisions, the tax officer may direct the taxpayer (who has under-reported his income) to pay the penalty of a sum equal to 50 per cent of the amount of tax payable on under-reporting of income. However, in certain situations where the under-reported income is in consequence of any misreporting thereof by any person, the penalty may be levied at 200 per cent of the tax payable on under-reported income.

Subsequently, the Finance Act, 2017 introduced new provisions⁵ under the Act and prescribed a fee for default in furnishing a tax return within the specified time. Further, the Finance Act 2018 rationalised the prosecution related provisions⁶. The prosecution provisions are applicable if the person willfully fails to file a tax return within the due date⁷. In case any default is committed in this regard by a company, including a foreign company, it may be deemed to be guilty of such default and shall be liable to be proceeded against and punished for willful failure to file the tax return. The principal officer of a company, including a foreign company, may be liable to prosecution proceedings for failure to file the tax return.

Our comments

Given the stringent compliance requirements under the Act, it is very important for the foreign companies to properly ascertain, on the basis of their facts, whether they are obligated to file their return of income in India. This will help them manage any penal or other consequences appropriately.



¹ As per Section 139(1) of the Act

² Under Section 271F of the Act

³ Section 270A of the Act

⁴ Assessment Year 2017-18 (Financial Year 2016-17)

⁵ Section 234F of the Act with effect from 1 April 2018 (AY 2018-19)

⁶ Section 276CC of the Act with effect from 1 April 2018 (AY 2018-19)

⁷ With effect from 1 April 2018 [Assessment Year 2018-19 (Financial Year 2017-18)]

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