Here are the tax risks of being a joint holder

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A joint account held with one's spouse has been an accepted mode of holding investments, including bank accounts, and aids in operation of the account or investment or facilitates transfer of investments to the spouse in the event of the investor's death. However, in recent months, a new dimension of tax risk has emerged for joint holders.

It has been well settled under tax laws that even if investments are held in joint names along with a spouse, the investment and the income therefrom would be regarded as belonging to the first named holder. There was no tax impact on the joint holder in such cases. It was only if the joint holder contributed towards the cost of the investment, that, for tax purposes, the investments would be regarded as being held jointly by both in the ratio of their respective contributions towards the cost of the investment.

In the past few months, there have been many tax reassessments initiated against joint holders for earlier years in which investments were made, without adequate opportunity of explanation of the source of such investments being permitted to them. Filing of a writ petition against such notices is often not an option, given the high cost of litigation in India. Such reassessment proceedings then necessitate hiring the services of a tax professional conversant with the reassessment procedures, which makes it an expensive and time consuming affair.

Specified Financial Transaction (SFT) statements, with information disclosed in income tax returns. The information contains names of both the first named holder as well as the joint holder. Reassessment notices have been issued to joint holders on the basis of such SFT statements, where such tax returns have not been filed.

In case of joint holders whose name is added only for convenience, in most cases, the joint holder has hardly any taxable income, and therefore is not required to file a tax return, and has accordingly not filed a tax return. Many of these joint holders are non-residents, who have only an overseas address. In many cases, the joint holders' email or telephone numbers are not registered with the income tax department, since they have not been filing tax returns in India. The joint holder, in such cases, do not receive the preliminary tax notice proposing reassessment and has therefore not been able to respond to the tax notice at all.

Should the tax authorities not focus on the first named holder alone, and where the first named holder does not respond, initiate proceedings against him? In the rare cases where he intimates that the investment does not belong to him, but to the joint holder, then of course, the tax authorities can definitely initiate proceedings against the joint holder.

Second, and more importantly, should reassessment notices be issued in such a routine manner without resorting to easier means of verification? There is a process for online verification of SFT transactions, where one can easily click on the link sent by tax authorities, and agree, disagree or partly disagree with the SFT information. This should be the norm. If notices are to be sent in physical form, they should take into account the time taken for delivery of such notices, particularly to overseas addresses, while giving time to reply. This will save valuable time and efforts of both tax authorities and investors.

In most of the cases, after wasting substantial time, effort and money of both the tax department and taxpayers, a conclusion is reached in reassessment proceedings that no tax is payable by the joint holder, as the investment has been made by the first named holder out of his disclosed funds or out of remittance made from his overseas funds.

What purpose does such an unfruitful exercise of reassessment serve? A better, unobtrusive and cost effective means of follow up on such SFT information, instead of issue of mass notices for reassessment, certainly needs to be considered by the tax authorities.

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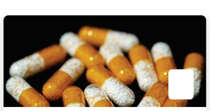

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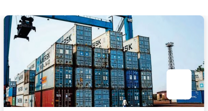

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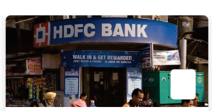

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