

Tax Hotline

April 16, 2001

COMPUTATION OF CAPITAL GAINS UPON AMALGAMATION OF COMPANIES

A three-member bench of judges of the Supreme Court of India ("**SC**") recently gave a landmark judgment in the case of Commissioner of Income-tax v. Mrs. Grace Collis [2001] 48 ITR 323 (SC) on the computation of capital gains accruing to a shareholder in the case of an amalgamation of companies. The term "transfer", as defined under Section 2(47) of the Act includes - *inter alia* - the sale, exchange or relinquishment of an asset or an extinguishment of any rights therein. The judgment of the SC in the case of CIT v. Rasiklal Maneklal (HUF) [1989] 177 ITR 198 held that amalgamation does not involve sale, exchange or relinquishment of the asset. The SC has further held, in the case of Vania Silk Mills Private Limited v. CIT [1991] 98 CTR (SC) 153, that the phrase "extinguishment of any rights therein" as mentioned hereinabove, cannot be extended to mean an extinguishment of rights independent of or otherwise than on account of transfer.

The general view so far has therefore been that there is no transfer of capital asset, as prescribed by Section 2(47) of the Indian Income-tax Act, 1961 ("the **Act**"), on amalgamation of one company with another. Therefore, such transactions were not believed to be subject to capital gains tax under the Act.

The SC in the instant case has disapproved of the observations made in the case of Vania Silk Mills in this regard and has held that "extinguishment of any rights in any capital asset" under the definition of "transfer" would include the extinguishment of the right of a holder of shares in an amalgamating company which would be distinct from and independent of the transfer of the capital asset itself. Thus, a merger would be regarded as a taxable event.

The decision of the SC in the instant case is likely to have significant impact on shareholders of companies involved in cross-border amalgamations, particularly for Indian shareholders holding shares in a foreign company.

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

The Tour d'Horizon of Data Law Implications of Digital Twins

May 29, 2025

Global Capability Centers

May 27, 2025

Fintech

May 05, 2025

Research Articles

2025 Watchlist: Life Sciences Sector India

April 04, 2025

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Audio

CCI's Deal Value Test

February 22, 2025

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Vyapak Desai speaking on the danger of deepfakes | Legally Speaking with Tarun Nangia | NewsX

April 01, 2025

**SIAC 2025 Rules: Key changes &
Implications**

February 18, 2025

