Direct Tax Vista

Your weekly Direct Tax recap

Edn. 102 – 8th November 2024

By Vivek Jalan, Partner, Tax Connect Advisory Services LLP

Friends

We are pleased to put forth this issue of DTV in Three Sections as under -

Section I - Coverage and Updates on Income Tax Act Revamp (Comprehensive Review) from 1st February 2025 as announced by the Union Finance Minister in The Budget (No.2) in 2024.

Section II - Video on Weekly Developments under Income Tax, International Taxation & International Trade

Section III - Coverage of most critical issues in Income Tax, International Taxation & International Trade in the bygone week.

We hope that this revamped DTV would assist you in your professional spheres.

Section I - Coverage and Updates on Income Tax Act Revamp (Comprehensive Review) from 1st February 2025 as announced by the Union Finance Minister in The Budget (No.2) in 2024

1. Income Tax Act Revamp (Comprehensive Review): Status and Suggestion on TDS/TCS provisions (cumbersome, rates & overlap)

The income tax department has received 6,500 suggestions from stakeholders over the past month on review of the Income Tax Act. Finance Minister Nirmala Sitharaman recently chaired a meeting comprehensive review of the Income Tax

Act, 1961, consisting of Revenue Secretary CBDT chairman Ravi Agarwal, and senior CBDT officials.

22 specialised sub-committees have been established to review the various aspects of the Income Tax Act. These committees have actively engaged in numerous meetings 'both in person and via VC' with domain experts to collaboratively explore and recommend improvements to the Act.

Many of the taxpayers and assess have infact represented on TDS/ TCS provisions simplifications. Our suggestion would be as follows on the same -

A. Reduce no: of Sections under TDS –

As of now there are 71 Sections under TDS as follows –

i. Section 190-191(2 Sections) – Provision for TDS/ Direct Payment
ii. Section 192 – 196D (45 Sections) - Provisions for specific deductions
iii. Section 197 – 206CCA (24 Sections) - Procedural

Most of the Sections can be merged and overlapping can be reduced. Infact there can be a single comprehensive Schedule of Rates of TDS (just Like the Customs Tariff Act) with Schedule Notes.

B. Lower Rates of TDS -

While some action has been taken to lower the TDS rates in this Finance Act (No.2) of 2024, yet still there is a huge refund being generated just because of the high TDS rates. It creates a lot of administrative work for the Income Tax Department too. Hence, the rate should be low.

Consequently, interest on default/deferral of Advance tax may be made higher.

C. There should not be any overlap between TCS and TDS.

For example - 194Q Vs 206C(1H) – Incase turnover of Buyer and Seller in the preceding year exceeds Rs.10 Cr. and the purchase exceeds Rs.50 Lakhs in the current year - Buyer would deduct TDS @ 0.1% u/s. 194Q. Now incase the buyer does not deduct TDS u/s 194Q, then the supplier has to apply TCS. This creates unnecessary burden on the supplier as he gets to know incase the buyer has not deducted TDS only at the fag end of the year.

It is argued that there is no need to have two parallel provisions for the same transaction. Just 194Q or 206C(1H) would be sufficient.

Introduction of 194Q and overlap with Section 206C (1H) and unintended consequence of Rule 31AA: In case of purchase of goods on which the purchaser is obliged to deduct TDS u/s. 194Q **the seller is still required to incorporate the details of such sale under Rule 31AA (Return) along with the details of TDS deducted on purchase for the purpose Sec. 206C(1H)**. In order to incorporate the details of TDS the seller has to collect the details of TDS. It would be difficult for the seller to collect the related information with regards to TDS applied by the buyer and then incorporate the same in TCS return under Rule 31AA. Even if, the seller is not responsible for collection of TCS on sale of goods u/s. 206C(1H) he will have to update in the return. Therefore, it is requested to make suitable amendments in Income Tax Rules, 1962 to exempt such requirement as per Rule 31AA.

Section II - Video on Weekly Developments under Income Tax, International Taxation & International Trade

The URL for this week's video is hereinunder-

https://www.youtube.com/watch?v=OVGtyz9XSsg&t=608s

Section III - Coverage of most critical issues in Income Tax, International Taxation & International Trade in the bygone week

1. Difference between "License" and "Royalty"

Receipts for Transfer of “Copyright” by a Non-Resident (not having a PE in India) to a Resident in India is taxable in India as ‘royalty’. However, Transfer of “License” is not. Hence the question comes as to what is a “Copyright” and what is a “License” in a copyrighted article. Lets analyse incase of a software. For a transfer of license, the following are the criteria which may be proved -

(i) **Non-exclusive use** - The software can only be used by the transfee by installing it in on a particular computer hardware.
(ii) **Non-exclusive use** - The software cannot in any manner be reproduced for sale, publication, disclosure, rent lease modify, loan, distribution, etc. It cannot be altered.
(iii) **Nontransferable license** - The software may be in the form of an End-User-Licence to the transferee.
(iv) The software cannot be modified other than customised for the user slightly.
(v) There is no right in the copyright of the end-user.
(vi) The software license though may be supplied for a lifetime.

On the other hand, For a transfer of ‘copyright’, the following are the criteria which may be proved -

(i) Software can be reproduced i.e. it can be used even other the computer hardware.
(ii) The software may be transferred with a copyrighted agreement.
(iii) The software can be modified by the transferee
(iv) The software can be supplied to someone else.

It was held in the case of **QOGNIFY PTE LTD Vs DEPUTY COMMISSIONER OF INCOME TAX [2024-VIL-1547-ITAT-CHE]** that the fact that ‘no title or ownership’ of the software or software documentation was transferred to transferee by the transferor; the ownership of the software documentation, modification, enhancement, improvements, adaptions shall remain at all times with the

transferor. Therefore, a conclusion cannot be drawn of treating the transfer as a sale of copy rights to consider as taxable under the head 'royalty'.

The Hon'ble ITAT In support of the claim of the assessee, relied on the decision of Hon'ble Supreme Court in the case of **Engineering Analysis and Centre of Excellence Pvt Ltd vs CIT [Civil Appeal No. 8733 to 8734 of 2018]**, wherein it has been held that payments made to the supplier of software would constitute royalty, only if the copy right or ownership of software part with any of the rights/interest as specified in section 14(a) and 14(b) of the Copyright Act, 1952. The Hon'ble Supreme Court has further held that, the consideration for mere use of software for the purpose for which it was supplied does not amount to royalty for the use of copyright in the software.

2. Fully Accessible Route' for Investment by Non-residents in Government Securities – Inclusion of Sovereign Green Bonds

The Reserve Bank of India vide RBI/2024-25/88 FMRD.FMD.No.06/14.01.006/2024-25 Dated 07.11.2024 has made the 10-year sovereign green bonds eligible in the fully accessible route category, which will be opened fully for non-resident investors without any restrictions, apart from being available to domestic investors.

Eligible investors i.e. Foreign Portfolio Investors (FPIs), Non-Resident Indians (NRIs), Overseas Citizens of India (OCIs) and other entities permitted to invest in Government Securities under the Debt Regulations can invest. As per the indicative calendar for issuance of Government dated securities, including Sovereign Green Bonds (SGrB), for the second half of the fiscal year 2024-25 (October 01, 2024 to March 31, 2025), the Government will raise ₹6.61 lakh crore.

3. Capital Reserve generated on amalgamation is not taxable as benefit/perquisite

In order to tax any amount w/s. 28(iv) of the Act, the following prerequisites need to be satisfied-

(i) there must be benefit or perquisite.

(ii) It must be received in a form other than money.

(iii) it must arise out of the business or profession carried on by the recipient, and

(iv) it must be revenue in nature.

Capital Reserve that arise on account of amalgamation are pursuant to the accounting treatment provided in the Scheme (which was in accordance with the applicable accounting standards). The said reserve is a reserve of capital nature and not a benefit or a perquisite or advantage of any kind accruing to the appellant and thus should not be taxable in hands of the assessee u/s 28(iv) of the Act. By amalgamation, nobody gets rich or poorer.

Incase a merger qualifies as an exempt transfer u/s 47(vi) of the Act, receipt of any property by the amalgamated company, pursuant to merger with amalgamating company should be exempt in hands of appellant u/s 56(2)(x) of the Act on account of the specific exemption provided.

The same was held in the case of **DY. COMMISSIONER OF INCOME TAX Vs SAMAGRA WEALTHMAX PRIVATE LIMITED [2024-VIL-1549-ITAT-MUM]**.

4. Interest takes the colour of the underlying principle: Interest on additional compensation is capital in nature

Section 28 of Land Acquisition Act of 1894 which contemplates payment of interest by the Collector on the direction of the Court on the difference of the amount, which the Collector ought to have awarded as "compensation" and the sum which the Collector did award as "compensation". However, Section 34 of the Act enjoins the Collector to pay interest, if the amount of "such compensation" is not paid or deposited on or before taking possession of the land.

Relying upon the basic principle that “interest takes the colour of the *underlying principle”*, it can be understood that interest on compensation not granted shall take the colour of the compensation itself. However, interest for payment not made in time would be purely for delayed payment.

Based on this underlying principle, incase of Compulsory land acquisitions by the Government under the Land Acquisition Act, the Hon'ble Supreme Court in the case of **CIT vs. Ghanshayam (HUF)** reported in 315 ITR 31, held that the interest received in accordance with section 28 of Land Acquisition Act of 1894which is part and parcel of amount of additional compensation eligible for exemption under section 10(37) of the Act.

However, interest u/s34 would be chargeable under section 56(2)(viii) of Income Tax Act read with section 145A(b) of the I.T. Act. Deduction @50% u/s 57(iv) would be available.

5. Excessive payment u/s 40A(3) are not disallowed incase business expediency and identity and genuineness of parties is proved

Excessive payment u/s 40A(3) are not disallowed incase it can be established as follows-

1. Payments have to be made in order that the assessee's business does not suffer or is hampered.
2. Expenses which are sometimes not predictable or planned
3. Expenses are extremely essential

The nature of the assessee's business is varied and no two events are comparable. Hence it was laid down in the case of **SHRI MUNISH ARORA Vs THE ACIT [2024-VIL-1543-ITAT-CHD]** that where due to business compulsions when the events are taking place, payments have been made to specified persons in spite of all constraints as they were holding an event to ransom and could have caused immense damage to the assessee's Goodwill and the assessee thereafter fired these people; the same would not be disallowed.

In Goenka Agencies vs Commissioner of Income Tax on 12 May, 2003 Equivalent citations: V (2003) 184 CTR Cal 104, 2003 263 ITR 145 Cal, it was held that-

"the identity of the payee who was an income tax assessee was established and the genuineness of the transactions was not doubted or disputed. It was held that the circular of the Board was not exhaustive but only illustrative. It was further held that the Income-tax Officer had to take a pragmatic view of the matter The Income Tax Officer should take a practical approach to problems and strike a balance between the direction of law and hardship to the assesses. He should not enmesh himself in technicalities. After all, the object is not to deprive the assessee of the deduction which he is otherwise entitled to claim. Where the amount was paid in cash or received in cash, the Assessing Officer has to find out whether the transaction is genuine or not and if he finds that the transaction is genuine, he should allow the deduction. The circular of the Board is not exhaustive, it is only illustrative and the Assessing Officer has to take into account the surrounding circumstances, considerations of business expediency and the facts of each particular case in exercising his discretion either in favour or against the assessee."

However, the following needs to be demonstrated –

1. Business expediency
2. Identity of parties
3. Genuiness of parties

6. RBI makes six amendments to know-your-customer (KYC) rules

The Reserve Bank of India (RBI) via a circular dated November 6, 2024, has announced amendments to the Master Directions on Know Your Customer (KYC) and the amended provisions in the Master Direction shall come into force with immediate effect. The KYC norms were amended in Six Paragraphs to align them with recent amendments carried out in the Prevention of Money Laundering (Maintenance of Records) Rules as under -

I. Paragraph 10 – Customer Acceptance Policy

II. Paragraph 37 - The 'Explanation' that "High risk accounts have to be subjected to more intensified monitoring" is applicable to sub-paragraphs (a) and (b) of paragraph 37 and accordingly, the 'Explanation' has been shifted.

III. Paragraph 38 - Updation/ Periodic Updation of KYC

IV. Paragraph 56 - CDD Procedure and sharing KYC information with Central KYC Records Registry (CKYCR)

V. Annex II of the MD on KYC

VI. The provisions of Master Direction may henceforth be read as 'paragraph' instead of 'section'.

7. Form 3CEDA & Form 3C-O online

The CBDT issued Notification No. 5/2024 on October 30, 2024, mandating w.e.f. 31st October 2024, the electronic submission of certain forms listed in Appendix-II of the Income Tax Rules, 1962. This directive applies to the following forms required under sub-rule (1) and sub-rule (2) of Rule 131, thereby facilitating streamlined digital compliance and improving the efficiency of income tax processes.

Form	Description
Form 3CEDA	Application for rollback of an Advance Pricing Agreement
Form 3C-O	Application form for approval under sub-section (1) of section 35CCC of the Income-tax Act, 1961

(*The author is a CA, LL.M & LL.B and Partner at Tax Connect Advisory Services LLP. The views expressed are personal. The author is The Lead - Indirect Tax Core Group of CII-ER and The Chairman of The Fiscal Affairs Committee of The Bengal Chamber of Commerce. He has Authored more than 15 books on varied aspects of Direct and Indirect Taxation. E-mail - vivek.jalan@taxconnect.co.in*)