Direct Tax Vista

Your weekly Direct Tax recap

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By Vivek Jalan, Partner, Tax Connect Advisory Services LLP

1. "One Nation One ITR" - Analysis of New Common ITR Form - The Next Big Reform in Income Tax

Buoyed by the success of GST, the Ministry of Finance is now looking to bring in reforms in Income Tax too. After the immense widening of the TDS/TCS net, now the long standing ITR Forms are set to be merged into one to give way to the advocated "One Nation One ITR". The Common ITR Form format is out for public comments for which the last date is 15th December 2022.

There are always two reasons behind a Tax Reform – One is to bring about ease in doing business and the other is always to enhance the tax revenues. It seems that this Common ITR Form is also proposed to achieve both the said purposes which we discuss as follows.

As of now there are seven ITR Forms, as follows -

ITR 1 – Salary + IFOS + 1 HP
ITR 2 – Salary + HP + Capital Gain + IFOS
ITR 3 – Salary + HP + PGBP + Capital Gain + IFOS
ITR 4 – PGBP (Presumptive) + 1 HP + Capital Gain + IFOS
ITR 5 – LLPs & Firms
ITR 6 – Companies
ITR 7 – Assesses with Charitable Income

The following is the change –

1. ITR-1 to ITR-6 will be merged into one Common ITR Form

2. However ITR 1 to ITR 4 will continue parallelly. Hence the taxpayers would get the option to either go for Common ITR or these forms. Hence for the Non-organised assesses, a parallel system would continue

3. ITR 5 & ITR 6 may be discontinued and replaced totally with Common ITR

Common ITR for Ease of Doing Business -

1. This dispensation seeks to ensure that there is no more confusion in choosing Forms and getting a defective return notice for wrong choice of forms

2. In the form, the schedules of basic information like the name of the taxpayer, Address, PAN No. etc will be pre-filled.

3. Schedules for computation of Total Income, Computation Schedule, Details of Bank A/c, Schedule for Tax Payment, will be applicable for all filers.

4. Certain wizard questions are to be answered by the taxpayer in the beginning and thereafter the form will automatically be customized for the filer.

5. The filer only needs to answer questions that apply to him and fill the schedules linked to those questions where the answer has been given as ‘yes’.

6. The filer just needs to fill only the relevant details asked through analysis of his or her own responses. Schedules which require information irrelevant to the filer are neither to be seen nor to be shown.

7. For example, incase you are a salaried Taxpayer with CG, Schedule for HP will not open at all; Again incase you have CG on sale of shares u/s 112A, then only that part where CG on sales of shares taxable u/s 112A will open; Exempt Income Schedule will only open incase you tick that you have EI

8. At present the taxpayer is mandatorily required to go through all the schedules, irrespective of the fact whether that particular schedule is applicable or not. This increases the time taken to file the ITRs and in turn creates difficulties for taxpayers.

Common ITR for Enhancing Tax Revenues –

1. We have already seen the process of automatic cross checking of third party data in the AIS/TIS which have started recently or Form 26AS. The proposed common form also contains the facility wherein this data will be automatically uploaded in the Common ITR Form. Incase you need to amend it, then the same may be done.

2. This would be important especially for Taxpayers which would have to now reconcile all third party data including GST Data, Bank Data, Suppliers data, etc and then file their ITR. Incase of any differences auto generated notices may be received by the taxpayers.

3. The following are the additional details required in the form which would

a. Reconciliation of Difference between Books and GST Turnover – This is already done in GSTR-9C and thus may be duplication of work
b. Bad Debts of more than Rs. 1 Lakh per debtor to be disclosed line item wise along with PAN No of the party.
c. Details of Interest on Loan Taken to be disclosed Loanwise
d. Investments details to be more elaborately disclosed
e. Particulars like, secured/unsecured loans/Inventories/etc required to be disclosed even for those under presumptive Scheme

There are various annexures in the draft for public comments are as follows which One should go through for further clarity -

a. Annexure B - Step by Step Approach to Filing
b. Annexure C - Customized Sample ITR for Firm
c. Annexure D - Customized Sample ITR for Company

2. Employers cannot allow LTC Claim by "circuitous route"

The Employers should be moral policemen also while passing the bills and income tax exemption claims of the employees. It seems that this is the verdict of the Hon'ble Apex Court in the case of STATE BANK OF INDIA Vs ASSISTANT COMMISSIONER OF INCOME TAX [2022-VIL-26-SC-DT]. This judgement will have wide ramifications in as far as deductions of TDS by employers are concerned, especially because it was passed in the matter of a Govt. Of India Concern itself. Hence a precedent has been set in The Government's own case. Private players should thus beware!

The issue is whether a claim of LTC u/s 10(5) be allowed incase the travel is between two points within India but between the two points incase travel is made to a foreign country as well, thus taking a circuitous route for the destination which involves a foreign place. It was held that this exemption cannot be claimed by an employee for travel outside India which has been done in this case and therefore the assessee-employer defaulted in not deducting tax at source from this amount claimed by its employees as LTC. There were two violations of the LTC Rules, pointed out - That the employee did not travel only to a domestic destination but to a foreign country as well and that the employees had admittedly not taken the shortest possible route between the two destinations. Thus the Applicant was held to be an assessee in default by the Assessing Officer. It was held that LTC claim for a travel to Port Blair cannot be allowed if made via Malaysia, Singapore or Bangkok or any foreign country… The contention that is no specific bar under Section 10(5) for a foreign travel and therefore a foreign journey and the exemption can be availed as long as the starting and destination points remain within India was held to be without merits. Even incase the payment is made to employees for the shortest route of their actual travel was rejected and the employer was held as an assessee in default the moment employees had undertaken travel with a foreign leg which was considered as not a travel within India and hence not covered under the provisions of Section 10(5) of the Act..

It was held that a foreign travel also frustrates the basic purpose of LTC. The intent of the LTC scheme was to familiarise a civil servant or a Government employee to gain some perspective of Indian culture by traveling in this vast country. It is for this reason that the 6th Pay Commission rejected the demand of paying cash compensation in lieu of LTC and also rejected the demand of foreign travel.

3. Opportunity of Charitable Organisations to migrate into New Scheme till 25th November 2022 by Filing Form 10A

The CBDT has further condoned the delay in filing of Form 10A up to 25th November, 2022. The government had changed the registration and approval procedure of trusts and institutions including educational and medical institutions from 1-4-2021. This covers the procedure of registration and approval under section 12AB, section 80G, section 35 and section 10(23C). For this purpose, CBDT has notified four forms viz., Form No. 10A, Form 10AB, Form 10AC, and Form 10AD vide Notification No. 19/2021 dated 26-03-2021. These forms have definite objectives and their uses are well defined in the notification itself. Form 10A was notified by the CBDT to enable trusts/NGOs to apply for migration of its registration to the new registration scheme as per section 12AB. Any application for registration of a trust shall be required to be made in form 10A. New Form 10A is available for e-Filing on the portal for registration or provisional registration or intimation or approval or provisional approval. Further, the same Form 10A is used for approval under section 80G and section 35 under Rule 11AA or 5CA.

The New Form 10A is used on 8 occasions under the new system covering section 10(23C), section 35(1), section 80G and section 12AB with corresponding Rules- Rule 2C, Rule 5CA, 11AA and Rule 17A respectively. These are-

Sl. No.	When Form No. 10A is used	Section	Rule
1	For existing institutions (fund or trust or institution or university or other educational institution or hospital or other medical	Clause (i) of first proviso to section 10(23C)	Rule 2C

	institution) which are already approved u/s 10(23C) before 1-4-21		
2	For newly established institutions (fund or trust or institution or university or other educational institution or hospital or other medical institution) which are applying for provisional approval u/s 10(23C)	Clause (iv) of first proviso to section 10(23C)	Rule 2C
3	Intimation under fifth proviso to sub-section (1) of section 35 by a research association, university, college or other institution	5th Proviso to Section 35(1)	Rule 5CA
4	For existing trusts or institutions or fund which are already approved u/s 80G before 1-4-21	Clause (i) of the first proviso to section 80G(5)	Rule 11AA
5	For newly established trusts or institutions or fund which are applying for provisional approval u/s 80G	Clause (iv) of the first proviso to section 80G(5)	Rule 11AA
6	For existing trusts or institutions which are already registered u/s 12A or u/s 12AA before 1-4-21	Section 12A(1)(ac)(i)	Rule 17A
7	For newly established trusts or institutions which are applying for provisional registration u/s 12AB	Section 12A(1)(ac)(vi)	Rule 17A

3. PE Income or FTS? How to Determine…

All income arising not from the activities of the employees of the branch office i.e. PE in India may not be effectively connected with PE in India. It has to be determined 'where' the services are rendered from. Even incase there is only one contract for Services rendered from the PE as well as from outside the PE, where separate consideration is paid for separate work undertaken the contract cannot be construed as a composite contract. This was held by The Hon'ble Supreme Court in the case

of Ishikawajima Harima Heavy Industries Ltd. Vs. DIT [(2007) 288 ITR 408 (SC)]. Sufficient territorial nexus between the rendition of services and territorial limits of India is necessary to make the income taxable in India. The entire contract would not be taxable in India and each work or service has to be viewed separately and according to which taxability of a particular income is required to be determined. The relevant and determinative yard-stock in this regard is whether the off shore services are giving rise to PE in India and whether the FTS is arising through such services. However, evidence should corroborate the fact that the service was rendered from outside India – like to prove that the employees who rendered the service never visited India. It may also be seen whether the services rendered from overseas required any inputs from the PE in India or vice-versa.

Following the above principles it was held by The ITAT Delhi that in the case of DCIT, INTERNATIONAL TAXATION Vs M/s AECOM ASIA CO. LTD [2022-VIL-1359-ITAT-DEL], that the Assessee has rightly offered OCI as fees for technical services under provisions of Section 115A of the Act and Services rendered by overseas employees of home office of assessee from Hong Kong for activities performed for Metro Rail Projects are not effectively connected to PE in India, therefore, addition made under Section 44DA of the Act was rightly deleted.

4. 2(15) Case Ratio would apply to future cases also as Revenue Starting to redo the assessments in accordance with the AHMEDABAD URBAN DEVELOPMENT AUTHORITY judgment

We had dwelt with the Apex Court Judgement in the case of M/S NEW NOBLE EDUCATIONAL SOCIETY VERSUS THE CHIEF COMMISSIONER OF INCOME TAX 1 AND ANR., [2022-VIL-23-SC-DT] in the DTV Edn 29. Various important points which came out of the judgement on the basis of which future cases u/s 2(15) may be decided were discussed as follows -

1. Section 2(15) cases of denial of exemption on the grounds of ‘objects’ of the trusts were slowly waning as Courts ruled on the ‘predominance of object’. Going forward these may be decided on the basis of ‘sole’ or ‘whole’ object’.

2. It is not a bar for trusts to generate surpluses in a given year or set of years per se.
3. Incase the surplus is generated in the course of providing charitable activities, there is no case for denial of exemption.
4. However, if the surplus is generated by other than charitable activities, then the exemption of the trust may be denied.
5. This judgement would apply prospectively. However, it would also apply to already existing trusts.

Now a clarification was sought from The Apex Court by The Revenue since it has been precluded from examining the facts and assessing the concerned assessment years. It was urged that the dismissal of the revenue's appeals will preclude an examination of the merits for these assesses in future, as well.

It was therefore clarified that the judgement would apply for the assessment years in question, which were before the Court and were decided; wherever the appeals were decided against the revenue, they are to be treated as final. However, the reference to future application has to be understood in this context, which is that for the assessment years which The Apex Court was not called upon to decide, the concerned authorities will apply the law declared in the judgment, having regard to the facts of each such assessment year.

Hence it is clarified that the judgement would apply to all future years also even for the assessees under consideration.

(*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*)