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CONTENT

INCOME TAX

DOMESTIC TAXATION

Circulars/ Notifications/ Press Release

TDS inapplicable on cash withdrawals by Money Changers licensed by Reserve Bank of India (RBI)

As per section 194N of the IT Act every banking company, co-operative society engaged in carrying on the business of banking and a post office is required to withheld tax (TDS) at the rate of 2% when the cash withdrawals exceed INR 10 million. Proviso to section 194N of the IT Act provides list of payees for whom the provisions of section 194N of the IT Act shall not apply. By exercising the power conferred by clause (v) of the proviso to section 194N of the IT Act, the Central Government, after consultation with the Reserve Bank of India (RBI) has relaxed the applicability of TDS on cash withdrawals made by the following persons:

- Authorised dealers under section 10(1) of the Foreign Exchange Management Act, 1999 and its franchise agents and sub-agents
- Full-Fledged Money Changer (FFMC) licensed by RBI and its franchise agent Where the purpose of withdrawal is:
- purchase of foreign currency from foreign tourists or nonresidents visiting India or from resident Indians on their return to India, in cash as per the directions or guidelines issued by RBI; or
- disbursement of inward remittances to the recipient beneficiaries in India in cash under Money Transfer Service Scheme (MTSS) of the RBI

(Notification No. S.O. 3719(E) [NO. 80/2019 (F.NO. 370142/12/2019-TPL (Part-20))], dated 15th October 2019)

S.O. 3771(E). In exercise of the powers conferred by clause (47) of section 10 of the Income Tax Act, 1961 (43 of 1961), the Central Government hereby notifies the infrastructure debt fund namely, the 'IDFC Infrastructure Finance Limited (PAN AADCI5030Q)' for the purpose of the said clause, for the
assessment year 2020-2021 and subsequent assessment years subject to the following conditions, namely:

- that the infrastructure debt fund shall conform to and comply with the provisions of the Income-tax Act, 1961, rule 2F of the Income-tax Rules, 1962 and the conditions provided by the Reserve Bank of India in this regard;

- that the infrastructure debt fund shall file its return of income as required by sub-section (4C) of section 139 of the Income-tax Act, 1961 on or before the due date.

(Notification No. 83/2019/F. No. 178/16/2016-ITA-I)

Case laws

[2019] Vodafone Idea Ltd. v. Commissioner of Income-tax, High Court, dated 4th October 2019

Facts:

- The assessee, engaged in providing telecommunication services, had suffered sizable deduction of tax at source.
- The return filed by the assessee was scrutinized and the assessment order gave rise to refund of certain sum.
- Since the refund was not forthcoming, the petitioner wrote several letters to the department but with no avail. The petitioner pointed out that TDS mismatch of as small as Re.1 (on account of rounding off of the figure) was cited as reason more than once for not releasing the refund.

Issue:

- If for some reason of technical glitch, system fails to permit payment of refund, concerned authorized officer must manually do so and refund of petitioner, when facts were not disputable, could not be withheld, that too on ground of technical difficulty of system
- Section 237 of the Income-tax Act, 1961 - Refunds - General (Illustrations) - Whether if for some reason of technical glitch, system fails to permit payment of refund, concerned authorized officer must manually do so - Held, yes - Applicant, engaged in providing telecommunication services, had suffered sizable deduction of tax at source - Return filed by assessee was scrutinized and assessment order gave rise to refund - However, refund was not granted citing TDS mismatch of as small as Re.1 (on account of rounding off of figure) as reason for not releasing refund

Held:

- When material facts are not disputable, there is no reason why the petitioner should not get the refund which flows from the order of assessment. The department does not dispute that the demands for other assessment years of the petitioner are presently not enforceable. That being the position, the refund of the petitioner, when facts are not disputable cannot be withheld, that too on the ground of technical difficulty of the system not accepting such a declaration of stay of the demands and giving effect to such position.
- The computer system and auto generation or any difficulty in doing so in a particular case, cannot override the correct legal position. In the present case, the correct legal position is that the petitioner must receive the refund. Whatever the technical difficulties in releasing the refund, the department must

sort it out. If for some reason of technical glitch the system fails to permit the payment of refund, the concerned authorized officer must manually do so. Therefore the respondent is directed to release the petitioner's refund amount with statutory interest.

Case laws

[2019] Principal Commissioner of Income-tax (Central)-1 v. NRA Iron & Steel (P.) Ltd, Supreme Court, dated 25th October 2019

Facts:

- Court notice of SLP was issued to the assessee-company. However, none appeared on behalf of the assessee. The Court further adjourned the matter by two weeks, and ordered that in case the assessee chose not to enter its appearance, the matter would be proceeded ex-parte.
- The assessee filed application for re-call of the judgment passed by the Court on the ground that it was not served with the notice of the SLP at its registered office nor was a copy of the SLP was served on it.

Issue:

- Section 261 of the Income-tax Act, 1961 - Supreme Court - Appeals to (SLP) - Assessee-applicant was served with Court notice of SLP - However, none appeared on behalf of assessee and judgment was passed ex-parte - Assessee filed application for re-call of judgment and de novo hearing on ground that it was not served with said notice - Whether since assessee was duly served through its Authorised Representative and was also provided sufficient opportunities to appear before Court and contest matter, application filed by assessee was to be dismissed.

Held:

- The Power of Attorney holder of the applicant for the assessment year 2009-10 was the agent of the assessee-company, and hence, notice could be served on him as the agent of the assessee-company in this case.
- The ground taken by the Power of Attorney of the applicant that even though Notice was served, he assumed that they were 'some Income Tax Return Documents' lacks credibility. It is difficult to accept that the envelope

containing the dasti Notice from this Court was considered to be 'some Income Tax Return documents'. The deponent does not at all disclose as to when the envelope containing the dasti Notice was ever opened. Furthermore, the ground urged that the chartered accountant was suffering from an advanced stage of cataract, and hence was constrained from informing his clients is again not worthy of credence. The dasti Notice was admittedly served on him on 13-12-2018 at his office, which was much prior to his surgery which he states took place on 4-1-2019. He had sufficient time to inform the applicant-company of the proceedings, prior to his surgery. Furthermore, he appeared before the Income Tax Authorities to represent the Applicant-company and its sister concerns on various dates prior to his surgery.

- Keeping in view the above-mentioned facts and the circumstances, this Court is satisfied that the applicant-company was duly served through their Authorized Representative, and were provided sufficient opportunities to appear before this Court, and contest the matter. The applicant-company chose to let the matter proceed ex-parte. The grounds for re-call of the judgment are devoid of any merit whatsoever.

INTERNATIONAL TAXATION

Circulars/ Notifications/Press Release

- Protocol amending Double Taxation Avoidance Agreement (DTAA) with Morocco notified
- Government of India has notified the Protocol amending DTAA with Kingdom of Morocco. The Protocol was signed on 8 August 2013 and is based on international standards of transparency and exchange of information. The notification specifies the date of entry into force of the amending Protocol as 15 July 2019. The Protocol has amended Article 2 (Entry into Force) and replaced Article 26 (Exchange of Information).

[Notification No. S.O. 3789(E) [NO. 84/2019 (F.NO. 503/09/2009-FTD-II)], dated 22nd October 2019]

REGULATION GOVERNING INVESTMENTS

FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

Foreign Exchange Management (Non-debt Instruments) Rules, 2019 ('NDI Rules') Ministry of Finance notified the NDI Rules in supersession of FEMA (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 ('FEMA 20R') and FEMA (Acquisition and Transfer of Immovable Property in India) Regulations, 2018

Amendments brought by these regulations / rules are summarized below:

- The definition of e-commerce now includes only companies incorporated under Companies Act i.e. Foreign company, office, branch, agency in India are not included in the definition henceforth.
- Following amendments pertaining to investments by Foreign Portfolio investor:
  - Aggregate limit on investment by Foreign Portfolio Investor limited to applicable sectoral caps (w.e.f. 1st April 2020) which can be decreased (before 31st March 2020) with the approval of its Board of Directors and its General Body through a resolution and a special resolution, respectively. In case where decreased, it can be increased up to sectoral limit. However, once the aggregate limit has been increased to a higher threshold, the Indian company cannot reduce the same to a lower threshold
  - FPIs have been permitted to invest in units of Category III AIFs/ offshore funds (satisfying certain criteria), REITs and InvITs on repatriation basis as well as remittance of such sale proceeds shall also be freely repatriated, net of taxes. Investment in investment vehicles cannot be made out of funds held in Special Non-Resident Rupee (SNRR) A/c other than the units of domestic mutual fund
  - 'Investor Group' have now been defined thereby giving clarity on who shall be included in the investor group for the purpose of calculation of applicable ceiling / thresholds
  - In case of breach of thresholds, FPI's to disinvest excess holding within 5 trading days failing which entire investment (of FPI's and investor group) would be classified as FDI and the FPI along with investor group shall not be allowed to make further portfolio investment in company concerned

- NRI or OCI may purchase / sell units of only those domestic mutual funds which invest more than 50% in equity ▪ The NDI Rules have not considered the changes brought in September 2019 in relation to FDI in coal mining, single brand retail, contract manufacturing and digital media
- FVCIs have been permitted to invest in equity, equity linked instruments or debt instruments of Indian 'startup' irrespective of the sector in which start-up is engaged in. However, if the investment is in equity instruments of a start-up, then the FVCI must comply with sectoral caps, entry routes and other specified conditions
- Definition for hybrid instruments, debt instruments, non-debt instruments and equity instruments have been inserted
- The definition of domestic custodian, foreign portfolio investment, foreign portfolio investor, investment vehicle, listed Indian company, sectoral cap has been amended
- No specific RBI approval required for the interest portion to be refunded in a case where equity instruments are not issued within 60 days from the date of receipt of the consideration

COMPANY LAW

MINISTRY OF CORPORATE AFFAIRS ("MCA")

MCA amends Schedule VII of Companies Act, 2013 - Activities which may be included by companies in their Corporate Social Responsibility Policies

The MCA vide notification dated October 11, 2019 has amended Schedule VII. MCA has substituted entry (ix) which was narrow and restricted. The amendment has widened the scope of CSR giving and spending especially to incubators funded by Central and State Governments, public funded universities and various institutions for research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).

Relaxation of additional fees and extension of last date in filing of forms MGT-7 and AOC-4 On receiving several requests from stakeholders, MCA vide its circular dated 29th October 2019, has decided to extend the time for filing of financial statements for the year ended 31st March 2019. The circular notifies that the due date for filing of the following forms has been extended:

e Form	Extended due date
AOC-4, AOC 4(CFS) AOC (XBRL) (Filing of company's financial statements and other documents)	30th November 2019
MGT-7 (Filing of annual return by companies having share capital)	31st December 2019

Companies (Meetings of Board and its Powers) Amendment Rules, 2019

MCA vide its circular dated 11th October 2019 has introduced Companies (Meetings of Board and its Powers) Amendment Rules, 2019 to amend the Companies (Meetings of Board and its Powers) Rules, 2014. The amended rules relate to Section 186 of the Companies Act - Loan and Investment by Company There are certain restrictions imposed on loans made, guarantees given, or securities provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities. The notification substitutes the words "business of financing of companies" with "business of financing industrial enterprises"

ACCOUNTS & AUDIT

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA ("ICAI")

EAC Opinion –Company's policy on transfer price for segment revenue and segment results under segment reporting.

Facts of the case

A company is engaged mining of bauxite, manufacturing of alumina and aluminum and generation of power at Captive power plant (CPP) for use in Smelter, and selling of alumina and aluminium both in domestic and international market. Besides, the company is also engaged in generation of wind power with setting up of wind power plants at distinct locations in the country.
Calcined alumina and thermal power are two important inputs for producing aluminium metal at Smelter Plant. The production process starting from bauxite mines to alumina refinery to Aluminium Smelter and Captive power plant is fully integrated.
At present, the company has two reportable primary operating business segments for the purpose of segment reporting as mandated under Ind AS 108, "Operating Segment."

- Chemical Segment
- Aluminum Segment

Bauxite produced for captive consumption for production of alumina is included under chemicals and power generated for captive consumption for production of aluminium is included under aluminium segment.

The company is working in an ERP-SAP environment. Transfer of alumina from chemical segment to aluminum segment is recorded in the books of account at moving average price based on inventory valuation in compliance to Ind AS 2 - Inventories. Similarly, thermal power from CPP (Aluminium Segment) as transferred to refinery, is recognised at monthly average price as per Ind AS 2.

For the purpose of inter segment transfer pricing of alumina, the company considers average sales realization from export of calcined alumina less in-land freight from refinery to Port at Vizag plus export incentive and captive power transferred from aluminium segment to chemical segment at average purchase price of power from state grid as the transfer price for disclosure of inter-segment revenue and segment results under segment reporting. It is evidently clear that price considered for inter segment transfer for the purpose of segment report is not the same as considered in the Accounts.

The queriest states that Ind AS 108 does not specifically prescribe the basis of determination of transfer price of inter-segment transfer for segment reporting. However, Accounting Standard (AS) 17, 'Segment Reporting', at paragraph 33 prescribes that "Segment information should be prepared in conformity with the accounting policies adopted for preparing and presenting the financial statements of the enterprise as a whole."
The company has decided to change its existing policy of intersegment transfer price as below:

Existing Policy -Inter-segment transfer of calcined alumina is considered at average sales realization from export sales during the period less freight from refinery to Port at Vizag plus export incentive. Transfer of power from aluminium segment to chemical segment is considered at the annual / periodic average purchase price of power from State Grid at alumina refinery.
Proposed Policy -Inter-segment transfer of calcined alumina from chemical segment to aluminium segment and captive power from aluminium segment to chemical segment is considered at their respective cost price used for recording such transactions.

Query:

Whether inter-segment transfer price of alumina from chemical segment to aluminium segment and captive power from aluminium segment to chemical segment at cost price, as recorded in the books for determination of cost of production and inventory valuation, will be appropriate for segment reporting, in the absence of specific stipulation regarding transfer pricing for inter-segment transfer in Ind AS 108,

'Operating Segments'?

Points taken into consideration:

The Committee notes that as per paragraph 25 of Ind AS 108, the amount of each segment item reported should be the measure reported to the chief operating decision maker (CODM) for the purposesof making decisions about allocating resources to the segment and assessing its performance. Thus, the Standard uses the 'management approach', under which, the information to be reported about each segment should be measured on the same basis as the information used by CODM for purposes of allocating resources to segments and assessing segments' performance rather than to be provided in accordance with the same generally accepted accounting principles (GAAP) used to prepare the financial statements. Thus, the measurement principles to be followed for presenting segment information could be different from the accounting principles and policies followed for preparing the general-purpose financial statement. Also, the Standard is not specific as to how this measure should be calculated, nor does it require that the same accounting policies should be used as those used in preparing the financial statements

The Committee notes that paragraph 27(b) of Ind AS 108 requires to disclose the nature of any differences between the measurements of the reportable segments' profits or losses and the entity's profit or loss before income tax expense or income. This, itself indicates that the Standard allows the company to have a non-GAAP presentation as long as the presentation is clear what constitutes the non-GAAP measure and there is a clear and detailed reconciliation of the disclosed measure to the respective GAAP amount.

The Committee also notes that Ind AS 108 does not define segment revenue, segment expense, segment results, segment assets and segment liabilities. It requires an explanation of how segment profit or loss, segment assets and liabilities are measured at each reportable segment as used by the CODM for decision-making purposes.
The Standard also specifically requires to disclose as minimum, the basis of accounting for any transactions between reportable segments. Thus, the Standard only requires to disclose the basis of accounting for any inter-segment transactions and does not prescribe any specific accounting/measure to be adopted for presenting segment information.

Opinion:

The inter-segment transfer price of alumina from chemical segment to aluminium segment and captive power from aluminium segment to chemical segment should be at the measure reported to the CODM for the purposes of making decisions about allocating resources to the segment and assessing its performance. However, in case CODM uses more than one measure of an operating segment's results/assets/liabilities, the reported measures should be those that the management believes are determined in accordance with the measurement principles most consistent with those used in the entity's financial statements as per the requirements of paragraph 26 of Ind AS 108.

GOODS AND SERVICE TAX

Payment of taxes for discharge of tax liability as per FORM GSTR-3B.

Every registered person furnishing the return in FORM GSTR-3B of the said rules shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the said Act by debiting the electronic cash ledger or electronic credit ledger, as the case may be, not later than the last date, as specified in the first paragraph, on which he is required to furnish the said return.

(Notifications No. 44/2019-Central Tax (Rate); dated 9th October 2019.)

Extension of time limit for furnishing the details of outward supplies in FORM GSTR-1

In exercise of the powers conferred by the second proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the details of outward supplies in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, for each of the months from October, 2019 to March, 2020 till the eleventh day of the month succeeding such month. The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of October, 2019 to March, 2020 shall be subsequently notified in the Official Gazette.

(Notifications No. 46/2019-Central Tax (Rate); dated 9th October 2019.)

Annual return under GST to be made optional for taxpayers whose aggregate turnover in a financial year does not exceed Rs.2 crore for FY 2017-18 and 2018-19

G.S.R.....(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees and who have not furnished the annual return under sub-section (1) of section 44 of the said Act read with sub-rule (1) of rule 80 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules) before the due date,

as the class of registered persons who shall, in respect of financial years 2017-18 and 2018-19, follow the special procedure such that the said persons shall have the option to furnish the annual return under sub-section (1) of section 44 of the said Act read with sub-rule (1) of rule 80 of the said rules: Provided that the said return shall be deemed to be furnished on the due date if it has not been furnished before the due date.

(Notifications No. 47/2019-Central Tax (Rate); dated 9th October 2019.)

Notification of due dates for GSTR-1, GSTR-3B and GSTR-7 for the state of Jammu and Kashmir.

The Central Government has notified the due dates for the state of Jammu and Kashmir: GSTR-1 for the month of August, 2019 to be filed by 11th October, 2019. GSTR-7 for the months of July and August, 2019 to be filed by 10th October, 2019. GSTR-3B for the months of July and August, 2019 to be filed by 20th October, 2019.

(Notifications No. 48/2019-Central Tax (Rate); dated 9th October 2019.)

Seeks to extend the last date for filing of FORM GST CMP-08 for the quarter July-September 2019.

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2019- Central Tax, dated the 23rd April, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 322(E), dated the 23rd April, 2019, namely:– In the said notification, in paragraph 2, after the first proviso, the following proviso shall be inserted, namely: – "Provided further that the due date for furnishing the statement containing the details of payment of self-assessed tax in said FORM GST CMP-08, for the quarter July, 2019 to September, 2019, or part thereof, shall be the 22nd day of October, 2019.". 2. This notification shall be deemed to have come into force with effect from the 18th day of October, 2019.

(Notifications No. 48/2019-Central Tax (Rate); dated 24th October 2019.)

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