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## CBDT Circulars & Notification

- CBDT clarified the taxability of income earned by Non-resident investor through **Alternate Investment Fund** from off shore investments: In the circular No. 14/2019, it is clarified that as per section 115UB of the Income tax Act, 1961 ('IT Act') the Income of AIF are deemed to be the income of Investor, therefore Income earned by non- resident investor/AIF through offshore Investments are not taxable.
- CBDT has clarified that the taxpayer has an **option to provide either scrip-wise details or aggregate** total of gains in the Capital Gains schedule of the return of Income for long-term capital Assets at his convenience.
- CBDT withdraws its circular No. 10/2018 dated 31/12/2018, wherein it was

clarified that the provisions of section **56(2)(viiia) will not be applicable** for fresh issue of shares. It has been further clarified that the circular is deemed to have not been issued in the first place.

- CBDT **condones the delay in deposit** of the third installment of tax under Income Declaration Scheme, 2016 as the due date of payment of tax fell on a bank holiday. Consequently, the taxpayers who had paid the installment amount on or before October 3, 2019 will not be deemed to be an assessee in default.
- **Due date** of filing of return has been extended to **August 31, 2019**. However tax is required to be remitted to avoid interest implications.

## CBDT Central Action Plan 2019-20

- Board directs CIT (A) to prioritize disposal of the appeals pending for more than 5 years.
- Due to uneven distribution of work between different jurisdictions of CIT(A), the PCCIT/CCIT has been required to carry out re-allocation and redistribution of the appeals to ensure faster completion.
- **National Judicial Reference System** ('NJRS') has been developed as effective tool to resolve litigation

management. A certificate is required from the concerned officer with respect to their use of NJRS for judicial works by September 30, 2019.

- The PCCIT has been directed to identify pending litigations of similar nature under his/her jurisdiction and bundle the same to for combined hearing on the Courts/tribunals.
- PCCIT/CCIT has been directed to identify prosecution complaints pending for more than two years and

to formulate case-specific strategy for early hearings and disposal of the same.

- PCCIT is required to make a monthly report on pending redressal of grievances beyond 60 days.
- **CBDT has directed the PCCIT/CCIT to ensure that the restoration of Companies** wherever required evaluated, and file applications before the NCLT.
- Action plans in respect of the **international taxation:**

1. Formulation of Selection parameters for **High risk remittances data in form 15CA/CB.**
2. High risk remittances to be pushed to jurisdictional Assessing Officers.

Disposal of cases pending under section 201(1) and 201(1A) of the Act.

3. TDS on purchase of **immovable properties from NRI** to be considered as High risk cases and PCCIT/CCIT are directed to ensure matching of TDS and AIR returns.

## Finance Bill 2019- Key Tax Proposals

<http://vcmv.in/wp-content/uploads/2019/07/Union-Budget-19-20-Key-Tax-Proposals.pdf>

## Finance Act 2019 - Amendments from Finance Bill

- The Additional requirements for the granting registration under **12AA** introduced vide Finance Bill 2019 is also **extended to educational institutions** under section 10(23C) of the Act.
- **Section 56(2)(viib)** has been amended to include that income assessed under said section will now be considered as **under reporting of Income**. Thus, it expressly enables the operation of penal section 270A of the Act.
- The newly inserted **section 194M** amended to be equally applicable to **commission payments** as well. For this purpose, the commission shall have the same meaning assigned to it under section 194H of the Act.
- The limit under the provision of **section 194N** has been amended to include **cash withdrawal** from one or more accounts. Section 198 has been further amended to provide that the TDS deducted under section 194N shall not be considered as Income

## Companies Amendment Bill 2019

The Companies Bill 2019 has been passed in the Lok Sabha on July 26, 2019 following are some of the key highlights of the Act:

1. Companies having holding-entity in abroad have an **option to choose the**

**financial year** for the purpose of consolidation of accounts.

2. The filing of declaration under section 10AA of the CA 2013 for **commencement of business** is required to be made within 180 days

failing which the company will be removed from register of companies.

3. Section 12 has been amended to provide **power to the registrar of the companies to undertake a physical verification** of the company and where it is found that the company is not undertaking the registrar now has power to initiate action and remove the name of the company from the register. This amendment requires the company to amend its registered office.
4. Section 134 of the CA 2013 has been amended to enable it from barring a

member or a firm from conducting statutory audit services for a period between 6 months to 10 years.

5. Change in approving authority from NCLT to central Government in cases of change in financial year of the company and conversion of public company into a private company.
6. The companies are required to deposit any unspent **annual CSR funds to the specified funds within Six months** from the end of the financial year.

## International Tax

**India:** Government of India enters into Agreement with Republic of China to harmonize the existing treaty in line with MLI.

**UAE:** UAE has recently passed legislation to introduce country-by-country reporting requirements and new economic substance requirement in line with OECD's recommendation.

**Singapore:** It is being proposed that with effect from January 1, 2020, the use of digital payment tokens as payment for goods or services will be outside the scope of GST, and the exchange of digital payment tokens for fiat currency or other digital payment tokens will be exempt from GST.

## FEMA

**Relaxation of end use of ECB:** the earlier restriction on the end use of ECB has been rationalized. Now the stakeholders are eligible to use ECB for the following purposes:

- i) Working capital and general corporate purposes if minimum average maturity of ECB is 10 years.
- ii) Repayment of rupee loan availed domestically for capex purposes if minimum average maturity of ECB is 7 years.

- iii) Further, permission is provided for eligible corporate borrowers who availed rupee loan domestically for capex in the field of manufacturing or infrastructure if classified as NPA to obtain ECB for payment, under one time settlements with lenders.

The lenders banks are also permitted to sell the loans mentioned in (iii) to the eligible foreign lender.

## GST

1. Time limit for furnishing FORM GST ITC-04 in respect of goods dispatched to a job worker or received from a job worker during the period from July 2017 to June 2019 extended till 31st August 2019.
2. Time limit for furnishing return by registered person required to deduct tax at source under Section 51 of CGST Act, in Form GSTR-7 for the period October 2018 to July 2019 extended till 31st August 2019.
3. Clarification on Annual Return and Reconciliation Statement issued

vide Press Release dated 3<sup>rd</sup> July 2019.

4. Tenure of GST Anti-Profiteering Authority enhanced to four years.
5. **Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019** introduced by Finance (No.2) Bill 2019 (awaiting Presidential assent as on 31<sup>st</sup> July 2019) for dispute resolution/amnesty scheme for legacy cases of Central Excise, Service Tax and specified Cess. Effective date of Scheme yet to be notified.

## Key judicial precedents

### A. **Rackspace US Inc., USA v. Dy. Commissioner of Income-tax Mumbai [2019] ITA No. 1634/2016 (Mumbai ITAT):**

#### Facts:

1. Rackspace Inc, a tax resident of US is engaged in business of providing public cloud hosting and managed hosting of services to its Indian Customers. The Assessee contended that income is being nature of business income, without the permanent establishment, the same is not taxable in India.
2. The Contention of the Revenue is as follows:
  - a. the Assessee company has provided rack space services and cloud hosting services through which the Indian customer acquires a right to use the

software and network which is in nature of right to use Industrial, commercial or scientific equipment and considered the same as royalty and subjected the it to tax.

- b. The Revenue contends that in case of the Cloud hosting services, the ownership of the equipment remains with the rack space and the same is utilized by the customer and fee received is in nature of royalty.

#### Held:

The Hon'ble Mumbai ITAT has held that the Assessee received **consideration for the services provided through the equipments, software and network and is not mere case of consideration for right to use the equipment**. Therefore the income earned by the Assessee is not in nature of Royalty. Thus, the same is taxable as Business

Income and in the absence of PE the Income is not liable to tax in India.

**B. Dalmia Power Ltd v. Assistant Commissioner of Income Tax [2019] ITA No. 1062 to 1068/PUN/2017 (Pune ITAT):**

**Facts:**

1. Dalmia power and Dalmia cements were amalgamated pursuant to a scheme of amalgamation. The scheme sanctioned provided for the filing of revised return claiming losses, benefits etc. without any additional cost.
2. As the delayed return was not accepted by the E-filing portal, the companies filed its return manually which was rejected by the Income tax authorities. On the following grounds:
  - a. As per section 139(5) of IT Act and Circular dated 9/2015, the revised return beyond due to date shall not be accepted without condonation order from the Board.
  - b. Further as per rule 12(3) of the return has to be furnished electronically and not mandatorily.
3. Single member bench ruled in the favour of the Assessee, which was discussed in the newsletter of Month May 2019.

**Held:**

The larger bench of the Madurai Branch of Madras High Court held that the NCLT exercises supervisory jurisdiction and not appellate jurisdiction while considering the sanction of schemes of arrangement or

compromise. It is also relevant to bear in mind that the order of NCLT whereby the scheme of arrangement was sanctioned, mandated that necessary permission should be obtained and complied. Therefore, **the order passed earlier directing Income Tax department to accept the revise return without condonation was set aside.** Further, the department had been directed to consider the principal laid down by NCLT while granting condonation.

**C. Income Tax Officer v. M/s. Twinkie Enviro-tech Pvt Ltd. & Omprakash Basantlal Goenka [2019] C.C. No. 7/SW/2014 (Addl. Chief Metropolitan Magistrate, Mumbai):**

**Facts:**

- 1) M/s Twinkie Enviro-tech Pvt Ltd a company deducted TDS under section 194H and 194A of the IT Act yet failed to remit the same to the credit of central government within the prescribed timelines. Director of the company is the officer responsible for deduction and remittance of the TDS.
- 2) The company deposited the tax along with the interest and penalty after 12 months from the end of prescribed timeline.
- 3) The Income tax officer initiated the prosecution proceedings under section 276B read with 278B of the Act and filed complaint with the Court.
- 4) It was contended by the company that the deposit of TDS was delayed due to error in software.

## Held:

The Hon'ble Magistrate held that defendant has not brought into record any evidence to disbelieve the complaint lodged; therefore, the complainant has proved the case against the defendant beyond reasonable doubt under section 276B r/w 278B of the Act. **The Company and the officer is sentenced to pay a fine of INR 5000/- and additionally the director sentenced to serve rigorous imprisonment of 3 months.**

## **D. Daimler India Commercial Vehicles (P) Ltd v. DCIT[2019] Tax Appeal Case no. 958 of 2018[Madras HC]:**

### Facts:

- 1) Daimler India Commercial Vehicles (P) Ltd is an Indian company incorporated to carry on the business with varied composite business objects laid down in its memorandum. The company filed its return of income claiming operation, financial and other expenses.
- 2) The learned AO held that though the Company had **set up business**, it has not commenced the commercial production and thus expenses were incurred before the commencement and same shall be treated as capital expenditure.
- 3) Aggrieved by the order, the company filed an appeal before the CIT(A) wherein it was held by the Commissioner that the bunch of composite business activities are commenced, business is set-up and ready for commencement of

business. Therefore expenses are revenue in nature and allowable.

- 4) Aggrieved by the order, department moved the appeal before the tribunal wherein it was held that **business was not set up** and set aside the order of the CIT (A).

Issue: Whether tribunal has power to enhance the assessment made by the AO?

Held: Relying on the ruling of the Hon'ble Apex Court in the case of **Mcorp Global P Ltd [2009] 309 ITR 434 (SC)**, held that **tribunal has no power to enhance the assessment made by the AO and therefore, erred in holding that the business of the company was not set up.** Further analyzing the factual matrix of CIT(A) it was held that the business of company is set up and relying on already a well settled position held that the expenses are revenue in nature.

## **E. M/s. Avaya India Private Ltd vs. ACIT [2019] ITA 532/2019 [New Delhi HC]**

### Facts:

- 1) The Assessee is a subsidiary of Avaya International LLC, USA and engaged in the business of programming and application support for switching integration and PBX systems ('ITES'). It also provides marketing support services ('MSS') to its Associated Enterprises (AEs).
- 2) The Assessee selected Transaction net Margin Method as the Most Appropriate Method and computed the margin for ITES as 14.5% and MSS as 6.48%. However,

the TPO disregarded the method adopted by Assessee and considered Comparable Uncontrolled Price for bench marking and determined the Arms Length Price.

- 3) In appeal to the Hon'ble ITAT, the Assessee submitted to the tribunal to exclude certain comparables including M/s. TCS E-serve Limited and M/s. TCS E-serve International Ltd as the entities operate in high brand value and high economies of scale. In this regard, the Tribunal excluded certain comparables as requested by the Assessee but however did not exclude the

comparable of M/s. TCS E-serve Limited and M/s. TCS E-serve International Ltd on the grounds of identical business nature and operation.

**Held:**

In a large number of decisions this Court has emphasized, that for there to be reliable benchmark studies for determining ALP not only the comparables have to be functionally similar but should have similar business environment and risks as the tested party. **The mere fact that transactions were identical is not either a sole or reliable yardstick to determine the opposite choice of comparables.**

## OECD

OECD invites tax payer's input on the first stage of the dispute resolution peer review in the following countries Anguilla, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Faroe Island, Macau, Morocco and Tunisia.

## Special Economic Zone (Amendment) Act, 2019

The definition of Person has been widened to include "trust or entity". Therefore, the trust and other entities are also eligible for obtaining permissions to operate units in SEZ or develop units in SEZ.

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