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CBDT Circulars & Notifications

- CBDT clarified that Non residents and Resident but not ordinarily resident are not required to disclose the **details of directorship in the foreign company** vide circular no. 21/2019.
- CBDT has issued circular 19/2019 wherein it is mandatory for all the communications / appeal / orders etc from income tax authorities shall have **Document Identification Number ('DIN')**. If any document issued without DIN only with prior written permission of CCIT or DGIT. Any communication without DIN will be considered Invalid.
- Finance Ministry has **simplified process of pending assessments in case of the Startups**.

The Assessing officers have been directed to accept the contention of the Assessee, who obtained permission from DPIIT and filed form 2 in the single issue of applicability of angel tax.

For the start-ups recognized by DPIIT but have not filed form 2 that Prior permission from supervisory authorities is required to inquire into the affairs of the Start-ups.

- **Monetary limit for the appeal** filed by the department before various forums has been **enhanced** as follows:

Forums	Earlier limit (In INR)	Enhanced Limit (In INR)
ITAT	20,00,000	50,00,000
High Court	50,00,000	1,00,00,000
Supreme Court	1,00,00,000	2,00,00,000

- Finance Act, 2019 received presidential consent on August 1, 2019.

- In exercise of powers conferred under section 90(1) of the Income tax Act, 1961, the central government has notified the provisions in the **ratified the MLI convention** and it **shall come into effect from October 1, 2019**.
- CBDT relaxes timeframe prescribed under section 143(1) of the Act pertaining to AY 2017-18 and directs that all valid returns having **refund claims can be processed on or before December 31, 2019** with prior approval of Pr. CCIT/CCIT.
- CBDT clarifies that TDS under section 194N will not be applicable for withdrawals before September 1, 2019.
- **Pre-validation and linking of Bank accounts with PAN are now mandatory for obtaining Income tax refund**.
- CBDT clarified that **80-IAC tax holiday** will be available only for the **recognized start ups** whose turnover does not exceed INR 25 Crores.
- CBDT has given approval for a pilot model to kick start **faceless assessments**. A pilot model with 60,000 tax-payers from 4 metro cities could be launched **from October 8, 2019**.
- Finance Minister announced **withdrawal of enhanced surcharge** on both Long term capital gains and short term capital gains from sale of listed shares of a company or listed units of Mutual funds covered under section 111A and 112A.
- As a measure to boost the sales in the motor vehicle sector the Hon'ble Finance minister proposed a **higher depreciation rate of 30% on vehicles purchased on or before March 31, 2020**.

International Tax

India- Spain: Republic of India and Kingdom of Spain has amended the double taxation convention and protocol. The following key articles have been amended:

1. Assistance in collecting taxes;
2. Exchange of Information; and
3. Limitation of Benefit.

USA: US treasury and Internal Revenue Service had **proposed regulations** to provide clarification on characterization of **cloud based transactions and Digital contents for federal Tax purposes**. This is

currently focused on characterization of Income received via subscription, sale of IP, lease, licensing, provisioning of services.

FEMA

The sub-regulation 3 of the regulation 6 of FEMA Acceptance of Deposit regulations been deleted. Now, the companies can raise **fund through commercial papers** by complying with Transfer or Issue of shares to Person Resident outside India Regulations.

The Foreign Direct Investment has been eased in the following sectors:

- 100 FDI allowed on Coal mining and sale
- 100% FDI on contract manufacturing
- 26% FDI under government route for digital media in news.
- Local Sourcing norms relaxed for Single brand retailing.

Goods and Services Tax

1. Due date for filing GSTR-3B for the month of July 2019 extended to 22nd August 2019 and to 20th September 2019 for Flood affected States (Notification No. 37/2019 – CT dated 21st August 2019).
2. Due date for filing Annual Return, in Form **GSTR-9/9A and GSTR-9C for the period July 2017 to March 2018 further extended to 30th November 2019** vide Removal of Difficulties Order no. 7/2019-CT dated 26th August 2019.

3. Blocking of E-way Bill generation by non-filers of GST returns, extended from 21st August 2019 to 21st November 2019 (Notification No. 36/2019 – CT dated 20th August 2019).

4. **Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019** introduced by Finance (No.2) Act, 2019 made **effective from 1st September 2019**, vide Notification Nos. 04/2019-Central Excise-NT and 05/2019-Central Excise-NT both dated 21st August 2019.

Companies Act, 2013

1. **Differential Voting Rights:**

The Ministry has enhanced the voting power in respect of shares with differential rights of the company.

Subsequent to the notification issued the voting power shall not exceed 74% of total voting power including voting power in respect of equity shares with differential rights issued at any point of time.

2. **Employees Stock Option ('ESOP'):**

The Startups can now issue ESOP up to a period of 10 years from the date of incorporation/ registration to its promoters and directors.

3. **Debenture Redemption Reserve relaxed:** The Ministry of Corporate Affairs removed the redemption requirement reserve for Listed Companies, NBFCs and HFCs. Further for unlisted companies the reserve required to be maintained reduced from 25% to 10%.

4. **MCA clarified that the appointed date for a merger under section 232 can be either a calendar date or linked to an occurrence of an event.** It is further clarified where the appointed date is linked to an event the same shall be disclosed in the scheme itself. If appointed date is after the date of filing with ROC, intimation is required to be given to ROC within such appointed date.

Key Judicial Precedents

A. Can 292BB be invoked on participation by Assessee where the notice under section 143(2) is absent?

Laxman Das Khandelwal v. Commissioner of Income Tax Civil Appeal No. 6261-6262 of 2019(SC)

Facts:

- The Assessee is an individual carrying on the business of brokerage.
- A Search and Seizure operation was carried out under section 132 of the Act on March 11, 2011. Based on which assessment under section 143(3) read with section 153D was completed.
- However, Department concluded the assessment without a notice under section 143(2) of the Act.
- The Assessee filed cross objection that the entire Assessment is invalid.
- The Revenue Contended that since the Assessee participated in the proceedings Section 292BB would be applicable and Assessment is valid.

Held:

The Hon'ble Apex Court has held that it is only the infirmities in the manner of service of notice that the Section 292BB seeks to cure. The Section is not intended to cure the complete absence of notice itself and upheld the decision taken by the High Court and Tribunal.

B. Whether the Succession of firms by an existing Company tax neutral?

M/s. Neptune Industries Ltd. Vs. ACIT Mehsana ITA No. 2701/AHD/2011 (Ahmedabad ITAT)

Facts:

- There were two partnership firms namely M/s. Neptune Equipments and M/s. Neptune Engineering and both businesses were succeeded by the Assessee Company which is an existing company.
- At the time of succession, the Know-how and the trademark was valued and transferred to the Assessee Company and the Company claimed depreciation on the same.

- Contention of the Department: The AO contended that the firms being succeeded by existing company it does not satisfy definition under section 47(xiii) of the Act.

Held:

There is no requirement under the provisions of section 47(xiii) of the Act that the firms should be converted into the company. It is sufficient if the existing company acquires all the assets and liabilities of the partnership firms in the manner as provided under section 47(xiii) of the Act to claim the exemption from the capital gain. The fact that know-how and trademark were valued and transferred was irrelevant under section 47.

C. Conversion of Company into LLP is a transfer chargeable to capital gains.

Dominos Printing Science PLC AAR No. 1290 of 2012 [NCR Bench]

Facts:

The Assessee Company is proposed to convert itself into LLP and would like to obtain ruling on the impact of the capital gains.

Issues:

1. Whether Conversion of Company into LLP is a transfer?
2. If it's a transfer, whether gains are computable under section 48?

Held:

At the time of conversion of a company into LLP, there is not only a transfer from Company to LLP but also transfer of shares by the shareholders in the form of extinguishment.

Relying on the decision of Hon'ble Apex court on Grace Collins, it was held that on conversion of Company into LLP the rights in the shares of the company are extinguished.

Explanation 2 to section 2(47) is inclusive definition wide enough to cover the extinguishing the rights in company.

In the second issue the AAR held that the full value of the capital in newly formed LLP will be full value of the consideration plus any other consideration or benefit received by each shareholder. On the other

hand cost of acquisition will be the amount paid by the shareholder at the time of purchase of shares.

Given the above, it was held that conversion of Company into LLP is a transfer, the capital gains are capable of being computed and even the interest of the partner in the LLP is equal to the shareholder's interest in the company, it does give rise to capital gain.

D. Availability of Foreign Tax Credit-

DCIT v. M/s. iGate Global Solution Ltd. [2019] IT TPA N., 10/Bang/2014 [Bang ITAT]

Facts:

- 1) The Assessee claimed tax credit of full amount in computation of Income towards taxes paid by its overseas branch situated abroad. The rate at which the tax paid was ranged from 10% to 40%.
- 2) The Company is eligible for exemption under section 10A and therefore taxed under the provisions of the MAT computation
- 3) Certain incomes which were taxed outside India were reduced from the book profits as per section 115JB.

Issues:

Whether Foreign Tax Credit ('FTC') available on full income only to the extent doubly taxed under section 115JB?

Whether FTC eligible on surcharge?

Held:

The Hon'ble ITAT held that as per the provisions of section 90(1)(a)(i) of the Act the FTC can be claimed only on the income doubly taxed. Therefore where the Income is not subject to tax as per section 115JB the FTC on such excluded income is ineligible.

From the plain reading of the section 90 (1)(a)(i) the foreign tax credit has to be allowed on the rate on which such income attracts tax. I.e. tax + Surcharge. However the same is limited to the actual rate of tax paid in the foreign nation.

E. Bangalore Tribunal rejects Thin Cap rules.

M/s. CAE Flight Training (India) P Ltd. V. ACIT Bangalore IT(TP) A No 599/Bang/2016

Facts:

- The Assessee paid interest on CCD to its three enterprises at the rate of 15% in various jurisdictions.
- The Learned TPO relied on the Thin-capitalization rules and re-characterized the nature of the CCD as equity.
- TPO also relied on the FDI policy of RBI to classify the Compulsorily convertible Debentures as Equity
- Given the above, the Interest payment was disallowed.

Held:

- The Topics of thin capitalization as applicable in other countries cannot be applied in the India.
- RBI policy is governed by the future repayment obligation. Since, there will be no future cash flow the same is treated as equity and has no relevance for the taxation purpose.
- Since, the CCDs do not enjoy voting rights and dividends are not paid before conversion, the CCDs are considered as Debts.
- Since the TPO has not arrived at the ALP, the matter has been restored with above directions.

Other Important Precedents

- Pune ITAT places reliance on the Hon'ble Rajasthan High Court and allows the claim of **Cess as business expenditure**. Hon'ble Rajasthan HC relied on the CBDT circular No. 91/58/66 and allowed the claim of cess as an expenditure by Assessee. – M/s. Bajaj Allianz General Insurance Company Ltd. (ITA No. 1111 and 1112/Pun/2017)

- Hon'ble Karnataka High Court directs AO to **issue refund along with the interest to the Foreign company** where the company was not able to provide documentary proof of the Virtual bank account.- M/s. Avo Carbon Holdings LLC WP. 24408 of 2019.
- Hon'ble Karnataka High court held that mere **failure to deposit TDS within prescribed time is sufficient to initiate prosecution proceedings**- M/s. Golden Gate Properties Ltd Criminal petition No. 868/2014
- Merely because a group company **purchased and transferred CCD** within short period at a loss **does not tantamount to a colourable device** to artificially create capital losses. M/s. Essar technologies Ltd. ITA No. 1958 & 2236/Mum/2018.

OECD

- Canada and Switzerland deposit their instrument of ratification for multilateral BEPS convention
- Guinea, Namibia, Albania joins the inclusive Framework on BEPS.
- Guinea, Namibia and Honduras have joined the Global Forum on Transparency and Exchange of Information for Tax Purposes

SEBI

SEBI (Listing Obligations and Disclosure Requirements) regulations 2015 were made stringent for companies having Special Rights equity shares. The **role and composition of the Independent directors has been substantially increased** in various committees such as stakeholder committee, Audit Committee, remuneration committee etc.,

New Direct Tax Law

The task force on the new direct tax law submitted its report to the Finance Minister. Some key takeaways of the report are Common Corporate tax rate, Branch profit tax, Settlement through mediation, **Elimination of DDT.**

The Code on Wages, 2019

- The Code was introduced and approved by the parliament; it subsumes Payment of Wages Act, 1936, Payment of wages Act, 1948, Payment of Bonus Act, 1965 and Equal Remuneration Act, 1965.
- It covers all the employees and some of the key aspects covered in the Act are floor wages, minimum wages, minimum Bonus, advisory board, gender discrimination etc.

NBFC

- The NBFCs has been directed not to levy foreclosure charges / prepayment penalties on term loans given to the individual borrowers other than business purpose.

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