Contents

Income Tax

Extension of due date for E-Filing of Returns of Income Tax and Audit Reports U/S 44AB of Income Tax Act from 30th September 2015 to 31st October 2015

CBDT gave in to the demand of extension of due date for E-Filing of Returns of Income Tax and Audit Reports U/S 44AB of Income Tax Act from 30th September 2015 to 31st October 2015.

Even knowing that there had been a delay in releasing the utilities for e-filing, CBDT had become adamant about not giving any extension. It was only after the directions from various courts that the date was extended but not until the last day.
(https://incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDFNews/Order-US-119-of-the-Income-tax-Act-1961-01-10- 2015.pdf)

CBDT to issue pre-filled ITR forms to ease e-filing

As part of efforts to popularize the electronic mode of filing Income Tax Returns (ITRs), the CBDT is planning to provide "pre- filled" return forms to filers, which will have an automatic upload of data on income and other vitals of a taxpayer.

The apex policy-making body of the I-T department is actively working to ensure that this customer-friendly measure can be launched for taxpayers from the next financial year.

CBDT Chairperson Anita Kapur said "We are looking at a possibility of making more entries for a pre-filled form so that it becomes easier for the taxpayer to file an e-return. We want to ensure that when technology moves, we can always bring in better facilities to make the life (of taxpayers) even easier,"

She said these technology upgrades are proposed to be initially started for small taxpayers who file the one-page ITR (ITR 1) and the thinking in the department is that when the data of income as per previous records is automatically uploaded then the taxpayer can file their ITRs quickly and wherever there are any amendments or changes, those can be corrected by the taxpayer himself.

Simplified Procedure for Self Declaration in Form 15G & 15H

Tax payers seeking non-deduction of tax from certain incomes are required to file a self declaration in Form No. 15G or Form No. 15H as per the provisions of Section 197A of the Income-tax Act, 1961 ('the Act').

Central Board of Direct Taxes (CBDT) has simplified the format and procedure for self declaration in Form No.15G or 15H. The procedure for submission of the Forms by the deductor has also been simplified.

Under the simplified procedure, a payee can submit the self-declaration either in paper form or electronically. The deductor will not deduct tax and will allot a Unique Identification Number (UIN) to all self-declarations in accordance with a well laid down procedure to be specified separately. The particulars of self-declarations will have to be furnished by the deductor along with UIN in the Quarterly TDS statements. The requirement of submitting physical copy of Form 15G and 15H by the deductor to the income-tax authorities has been dispensed with. The deductor will, however be required to retain Form No.15G and 15H for seven years.

The revised procedure shall be effective from the 1st day of October, 2015

Ad-hoc disallowance by assessing officer not permissible

ITAT Lucknow Bench has delivered an important ruling wherein it was held that ad-hoc disallowance by an assessing officer is not permissible under the Law.

In the case of Mukesh Kumar Mahawar v/s. Income Tax Officer, it has been held that if the Assessing Officer is not satisfied with a particular expense, he may make necessary verification and also to point out defect in the books of account, but ad hoc disallowance should not be made by making general observation.

Income Tax department to use email for issuing notices and obtaining information - to curb issues of harassment

In welcome news for taxpayers, the IT department has decided to launch a new system of issuing email notices to which an assessee can respond electronically, obviating the need for a physical interface with the taxman which often led to complaints about harassment. When a notice is issued in an assessment or scrutiny case, the taxpayer can send the department an e-response.

CBDT Chairperson Anita Kapur said in an interview “We are trying to resolve some security issues in this regard now after which it could be implemented,”. If a taxpayer provides the department with a bonafide email address in his Income Tax Return (ITR), the Board will be able to send him an e-notice and not a paper document dispatched through post for which he usually has to travel and meet the Assessing Officer (AO). At the time of final hearing when the AO wants to close the matter, the taxpayer can come once to the tax office.” Kapur added that as part of measures to further check instances of harassment of taxpayers, the CBDT has recently asked its field offices to not undertake any “fishing or roving inquiries”.

“We are also saying to our officers that when you select a case for scrutiny you should say that this is the reason that we have selected your case. “We are asking our officers that if we are selecting a case for scrutiny on third-party information (through banks, credit card agencies) just limit your inquiry to those issues which have been flagged and based on which your case have been selected for scrutiny. No fishing inquiries (should be undertaken).”

Service Tax

Clarification on Service tax levy on services provided by a Goods Transport Agency

The All India Transport Welfare Association (AITWA) has represented regarding the being faced by the Goods Transport Agencies (GTAs) in respect of service tax levy on the services of goods transport. Doubts have been raised by the All India Motor Transport Congress (AIMTC) regarding treatment given to various services provided by GTAs (a composite service which may include various ancillary services such as loading/ unloading, packing/unpacking, transshipment, temporary storage etc) in the course of transportation of goods by road.

The issue has been examined and the Central Board of Excise and Customs (CBEC), has clarified as under:

A single composite service need not be broken into its components and considered as constituting separate services, if it is provided as such in the ordinary course of business. Thus, if ancillary services are provided in the course of transportation of goods by road and the charges for such services are included in the invoice issued by the GTA, and not by any other person, such services would form part of GTA service and, therefore, the abatement of 70%, presently applicable to GTA service, would be available on it.
(Circular No. 186/5/2015-ST dated October 5, 2015)

Important Judgments:

Reverse Charge Mechanism

The appellant, an exporter, received remittances from their customers through their banks abroad who charged some amount from the appellant's Indian bank which in turn recovered the same charges from the appellant. The Tribunal held on the basis of facts narrated in the impugned order that the foreign banks did not charge any amount from the appellant directly and that it was the appellant's bank who paid the charges of the foreign bank. Hence the appellant cannot be treated as service recipient and no service tax can be charged from them u/s. 66A read with Rule 2(1) (d) (iv) of Service Tax Rules, 1994 in respect of the foreign bank's charges especially considering that in the appellant's own case for the previous period, no appeal was filed by the Department against the Commissioner (Appeal)'s order which had dropped the demand on the same issue.
[Greenply Industries Ltd. vs. CCE (2015) 38 STR 605 (Tri-Delhi)].

Interest & penalty for delayed payment of tax

Where the assessee was regularly paying service tax under reverse charge mechanism on certain input services received by them but had failed to pay service tax on few of the transactions due to oversight which was paid by it subsequently the Tribunal held that imposition of penalties u/s. 77 & 78 were not warranted especially considering the fact the appellants would be eligible to avail the CENVAT credit of the tax paid by them. However, the argument of revenue neutrality would not hold good for non-levy of interest on account of such delayed payment and hence the Tribunal upheld the demand for payment of interest
[Forbes Marshall Pvt. Ltd. vs. CCE (2015) 38 STR 843 (Tri-Mumbai)].

VAT AND PROFESSION TAX (MAHARASHTRA)

Refund through National Electronic Funds Transfer (NEFT)

Ref: - 1. Notification No. 1/10. VAT.1510/C.R-6/Taxation-1 Dt. 5th Feb 2010.
2. Notification No. VAT.1515/C.R-100!Taxation-l Dt. 18th Sept. 2015.

Presently, the refunds are granted through manual issuance of Refund Payment Orders (RPO). These RPOs are delivered through Post. The process is time consuming and causes delay in actual deposit of refund in the bank account of the dealers. In order to avoid this delay, a facility for direct remittance of refund through NEFT, in the bank account of the dealer has been made available by the sales tax department.

The payment of refund through National Electronic Funds Transfer (NEFT) mode has been made mandatory from 01/10/2015.

To avail this facility the eligible registered dealers under MVAT Act, 2002 are required to comply with the following necessities:-

The dealer needs to have his Bank Account in the Bank which facilitates National Electronic Funds Transfer (NEFT).

It is essential that the information about the NEFT enabled Bank Account i.e. Bank Account Number, Branch details, IFSC code in respect of the dealer are included by the dealer in the Registration record. In order to include the aforesaid details in the registration record} the dealers are required to submit an amendment application to the concerned Registration Branch/Officer, along with Annexure A duly attested by the Branch Manager of the concerned Bank and the cancelled cheque of the bank in which he desires to have remittance of his refund through NEFT. If the cheques are not issued by the bank then the Certificate from the concerned Branch Manager conforming the NEFT enabled bank account details shall be submitted by the dealers. The Annexure-A on record shall remain valid as long as no fresh Annexure-A is submitted to the Registration Branch along with the cancelled Cheque/Bank Certificate} as mentioned earlier.

It is needless to say that, the refund under NEFT shall be subject to the provisions of the Maharashtra Value Added Tax Act, 2002 and the rules made there under. Any amount, if wrongly refunded shall be recovered as per the provisions of law. The dealers are requested to approach the Registration Branch /Officer for the amendment in their registration record as mentioned at 2(b) above and avail the facility of direct deposit of refund in their bank account.

The refund under the MVAT Act, 2002 where the refund proposal is processed on or after 01/10/2015 shall be paid through the NEFT mode. However, the refund in respect the dealers - (a) whose registration certificate is cancelled} (b) who is non-TIN holder and (c) where orders are not passed on MAHAVIKAS, shall be continued to be granted manually} as per the preexisting system,

(Trade Circular No. ACST(VAT)2/NEFT/15-16/B- 557)

FEMA

Trade Credit Policy - Rupee (INR) Denominated trade credit

With a view to providing greater flexibility for structuring of trade credit arrangements, it has been decided by the Reserve Bank of India (RBI) that the resident importer can raise trade credit in Rupees (INR) within the following framework after entering into a loan agreement with the overseas lender:

- Trade credit can be raised for import of all items (except gold) permissible under the extant Foreign Trade Policy
- Trade credit period for import of non-capital goods can be up to one year from the date of shipment or upto the operating cycle whichever is lower
- Trade credit period for import of capital goods can be up to five years from the date of shipment
- No roll-over / extension can be permitted by the AD Category - I bank beyond the permissible period
- AD Category - I banks can permit trade credit up to USD 20 mn equivalent per import transaction
- AD Category - I banks are permitted to give guarantee, Letter of Undertaking or Letter of Comfort in respect of trade credit for a maximum period of three years from the date of shipment
- The all-in-cost of such Rupee (INR) denominated trade credit should be commensurate with prevailing market conditions
- All other guidelines for trade credit will be applicable for such Rupee (INR) denominated trade credits

Overseas lenders of Rupee (INR) denominated trade credits will be eligible to hedge their exposure in Rupees through permitted derivative products in the on-shore market with an AD Category - I bank in India. Necessary guidelines for hedging will be issued separately.
(RBI/2015-16/175 A. P. (DIR Series) Circular No. 13 dated September 10, 2015)

External Commercial Borrowings (ECB) Policy - Issuance of Rupee denominated bonds overseas

In order to facilitate Rupee denominated borrowing from overseas, it has been decided to put in place a framework for issuance of Rupee denominated bonds overseas within the overarching ECB policy. The broad contours of the framework are as follows:

- Eligible borrowers: Any corporate or body corporate as well as Real Estate Investment (REITs) and Infrastructure Investment Trusts (InvITs).
- Recognised investors: Any investor from a Financial Action Task Force (FATF) jurisdiction.
- Maturity: Minimum maturity period of 5
- All-in-cost: All in cost should be commensurate with prevailing market conditions.
- Amount: As per extant ECB policy.
- End-uses: No end-use restrictions except for a negative

All other provisions of extant ECB guidelines regarding reporting requirements (including obtaining Loan Registration Number (LRN) through submission of Form 83 where type of ECB is to be specifically mentioned as borrowing through issuance of Rupee denominated bonds overseas), parking of bond proceeds, security / guarantee for the borrowings, conversion into equity, corporates under investigation, etc., will be applicable for borrowing by issuance of Rupee denominated bonds overseas.
(RBI/2015-16/193 A. P. (DIR Series) Circular No. 17 dated September 29, 2015)

Regularization of assets held abroad by a person resident in India under Foreign Exchange Management Act, 1999

The Government of India has enacted The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (Black Money Act) on May 26, 2015 to address the issue of undisclosed assets held abroad. It provides for separate taxation of income and assets acquired abroad from income not disclosed but chargeable to tax in India.

To effectively deal with assets held abroad by persons resident in India in violation of the Foreign Exchange Management Act, 1999 (FEMA) for which declarations have been made and taxes and penalties have been paid under the provisions of the Black Money Act, Reserve Bank has issued the Foreign Exchange Management (Regularization of assets held abroad by a person resident in India) Regulations, 2015 notified though Notification No. FEMA 348/2015-RB dated September 25, 2015 vide G.S.R. No. 738 (E) dated September 25, 2015.

Accordingly, it is clarified that:

- No proceedings shall lie under the Foreign Exchange Management Act, 1999 (FEMA) against the declarant with respect to an asset held abroad for which taxes and penalties under the provisions of Black Money Act have been paid.
- No permission under FEMA will be required to dispose of the asset so declared and bring back the proceeds to India through banking channels within 180 days from the date of declaration.
- In case the declarant wishes to hold the asset so declared, she/ he may apply to the Reserve Bank of India within 180 days from the date of declaration if such permission is necessary as on date of application. Such applications will be dealt by the Reserve Bank of India as per extant regulations. In case such permission is not granted, the asset will have to be disposed of within 180 days from the date of receipt of the communication from the Reserve Bank conveying refusal of permission or within such extended period as may be permitted by the Reserve Bank and proceeds brought back to India immediately through the banking channel.

(RBI/2015-16/195 A. P. (DIR Series) Circular No. 18 dated September 30, 2015)

International Tax

Payment for capturing and delivering of live coverage of cricket matches is neither FTS nor royalty under the India-UK tax treaty.

Based on the facts and in the circumstances of the case, recently, the Mumbai Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of IMG Media Limited (the taxpayer) held that a payment received by the taxpayer for capturing and delivering of live audio and visual coverage of cricket matches is not taxable as Fees for Technical Service under Article 13(4)© of the India-U.K. tax treaty (tax treaty). The taxpayer delivered the 'final product in the form of 'program content' by using its technical expertise and in that process the taxpayer does not 'make available' any technology/knowhow to the Board of Cricket Control of India (BCCI).

The Tribunal held that in order to constitute as royalty, the payment should have been made 'for the use of, or the right to use any copyright, etc'. However, in the instant case the payment was made to the taxpayer for producing the program content consisting of live coverage of cricket matches. The job of the taxpayer ends upon the production of the program content and the broadcasting is carried out by some other entity for which a license was given by the BCCI. Therefore, the question of transfer of all or any right does not arise in this case. Accordingly, the payment received by the taxpayer cannot be considered as 'royalty' under the tax treaty.

(IMG Media Limited v. DDIT (ITA No. 1513/Mum/2014)(Mum) –Taxsutra.com)

Profit Split Method considered as the most appropriate method if activities performed by taxpayer and its associated enterprises are inextricably linked, and both the entities contribute to the value chain. Based on the facts and in the circumstances of the case, recently, the Delhi Bench of the Income-tax Appellate Tribunal (Tribunal), in the case of Infogain India Pvt. Ltd. (the taxpayer) upheld the application of Profit Split Method (PSM) where different activities performed by the taxpayer as well as its Associated Enterprises (AEs) were inextricably linked and both the entities contributed significantly to the value chain of provision of software services to the end customer. The Tribunal rejected the transfer pricing officer's (TPO) conclusion that PSM was adopted only to camouflage loss at net level and held that 'the decision as what is the most appropriate method does not depend on the fact as to whether an assessee is having loss or has a profit'.

In reaching the above conclusion, the Tribunal also observed that in the taxpayer's case for the preceding and successive years, PSM was accepted by the tax department. Further, the Tribunal has set aside the issue of allocation of profit split between the taxpayer and its AE i.e., 40:60 to the file of Assessing Officer/TPO with a clear direction that since the split was accepted by the tax department in the preceding and succeeding years, no deviation shall be done if the facts are similar for the year under consideration as well. (DCIT v. Info gain India Pvt. Ltd. (ITA No. 6134/Del/2012))

Despite substantial single party purchases, there is no associated enterprise relationship, as requirement of influence over pricing and other conditions relating thereto, are not satisfied

Based on the facts and in the circumstances of the case, recently, the Pune Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of W. B. Engineers International Private Limited (the taxpayer), upheld the findings given by the Dispute Resolution Panel that merely having substantial single party purchases will not demonstrate influence on pricing and other conditions in the instance of no associated

enterprise relationship. The Tribunal observed that the bare perusal of the various clauses of the distribution agreement entered into by the taxpayer with the foreign third party shows that both are independent parties, thus transfer pricing provisions are not applicable to the taxpayer.

(DCIT v. W.B. Engineers International Pvt. Ltd. (ITA No. 523/PN/2014 (AY 2009-10)) – Taxsutra.com)

Revenue earned from distribution of news and financial information products is not taxable in India, in the absence of a dependent agent PE and service PE under the India-UK tax treaty. Based on the facts and in the circumstances of the case, recently, the Mumbai Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Reuters Limited (the taxpayer) held that the revenue earned from distribution of news and financial information products by the taxpayer is not taxable in India, in the absence of a dependent Agency Permanent Establishment (PE) and service PE under the India-U.K. tax treaty. The Tribunal observed that the taxpayer's distributor in India i.e. an Indian subsidiary is not a dependent agent of the taxpayer. The qualified character of the agency is the authorization to act on behalf of somebody else so much as to conclude the contracts. The Indian subsidiary is not acting on behalf of the taxpayer. It is an independent entity and the relationship between the taxpayer and the Indian subsidiary is on a principal-to-principal basis. The Tribunal also observed that the employee deputed by the taxpayer in the form of a News Bureau Chief (NBC) cannot be constituted as a service PE in India, since such an employee has nothing to do with services provided by the taxpayer to the distributor. NBC was only acting as a chief reporter and text correspondent in India in the field of collection and dissemination of news.
(Reuters Limited v. DCIT (ITA No. 7895/Mum/2011)(Mum) – Taxsutra.com)

Government of India decides that Minimum Alternate Tax (MAT) shall not be applicable to foreign companies having no permanent establishment / place of business in India.

The issue of applicability of MAT under section 115JB of the Income Tax Act, 1961 on foreign companies has been a matter of debate before the Courts. The government now, vide the Press Release, has notified that with effect from 1 April 2001 the provisions of Minimum Alternate Tax shall not apply to foreign companies if:

The foreign company is a resident of a country having a tax treaty with India and such company does not have a permanent establishment within the definition of the term in the relevant tax treaty, or

The foreign company is a resident of a country which does not have a tax treaty with India and such foreign company is not required to seek registration under Section 592 of the Companies Act 1956 or Section 380 of the Companies Act 2013. The press release also mentions that an appropriate amendment to this effect will be carried out under the Income-tax Act, 1961. This will provide a much needed clarity on applicability of MAT provisions to foreign companies and would also help in avoiding unnecessary litigation.

(Press Information Bureau Release, dated 24 September 2015)