

# Direct Tax Vista

Your weekly Direct Tax recap

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Dear Readers

It's the start of the Budget Season. It is a season where The Ministry of Finance provides time to Trade, Industry & Professionals to represent before them on issues faced. Taxation issues as always take the centre stage. In this special Bulletin of The Direct Tax Vista for our readers we present the 'asks' from Trade & Industry in Income Tax and International Taxation. In case readers have other issues too, they may please write to us for presenting before the concerned authorities.

**1. Reducing Compliance burden by making the process of application for Lower/NIL TDS Certificates u/s 197 of The Act - every 5 years instead of yearly** - Just like re-validation of Certificates for exemption u/s 11 is required to be made once in every 5 years, in the same manner, it is recommended that the lower/NIL TDS certificates application be required to be made every 5 years instead of every year. As regards the value w.r.t. which Nil/Lower TDS deduction will be made by the deductors for the concerned year, it is suggested that an automated process of self-declaration be made so that the assesses can declare the values per deductor online and the lower/Nil TDS certificate be issued in an automated environment for the year concerned.

**2. Foreign tax credit (FTC) u/s 90 of the Act** - Assessing Officers are disallowing claims for relief on account of foreign tax credits, where the tax credit certificates are received by the Indian assessee after the due date for filing tax returns for a particular assessment year. Necessary amendments should be made in the Act/Rules to incorporate the process of claiming the tax credit, where the foreign tax credit certificates are received by an assessee after the end of the assessment year.

**3. Disallowance of expenses relating to exempt income under section 14A of the Act** - It is suggested that rule 8D be amended and such that the disallowance is restricted only to the expenditure directly attributable to earning of exempt income. With respect to the disallowance for administrative expenditure, it should be determined by estimating the time of the personnel and resources involved for undertaking the administrative activities which result in earning of the exempt income. The aforesaid estimation should be done on a reasonable basis after considering the facts of each case and this should be certified by the Tax Auditor. In case this is not feasible, then the **disallowance be restricted to 0.5% of the exempt income** instead of 1% of average value of investments.

**4. Tax Deduction at Source under section 194R of the Act and Section 28(iv) of Income from Business/Profession** – It recommended to suitably clarify in Circular 12 that the discounts granted would not come within the ambit Section 28(iv). Parallely it is recommended to clarify in Circular 12 that 'discounts' include 'pre-sale discount' and 'post-sale discount'. Further, It should be clarified that write off of bad debts is not a benefit or perquisite within the provisions of Section 194R since the requirement to deduct TDS u/s. 194R will add to the cost of the corporate creditor who has already suffered a loss due to the write off of bad/unrealized debt.

**5. Requirement to issue and maintain tax deducted at source ('TDS') and Tax collected ('TCS') certificates:** Maintaining of Forms 16A/ Form 27Ds and subsequent reconciliation of these with Form 26AS for claiming TDS/TCS credit increases the compliance time and efforts. This is contrary to the motive of ease in compliance. The following are recommended :

- a. Consider removing the requirement for payers to issue TDS/TCS certificates and consider prescribing Form 26AS (generated through secure safeguards to ensure payee information is not allowed to be tampered with) as the basis for tax authorities to grant tax credit.

b. Consider the requirement of issuing TDS/TCS certificates only to persons not holding a PAN (especially non-residents for them to be able to claim credit in their country of residence).

**6. Linking of PAN and TAN :** To enable seamless reconciliation exercise, the following recommendations are made:

- a. Consider including PAN along with TAN in Form 26AS and TDS certificate.
- b. Consider linking PAN and TAN, similar to the linking of PAN and Aadhar.
- c. Consider enabling an API mechanism to retrieve TAN of the taxpayer by using a PAN input by having a trusted common identifier.

**7. Disallowance of Expenditure incase payment is not made to Creditors within 180 Days –** Necessary amendments may be made in the Act/Rules to incorporate the disallowance of the expenditure incase a payment is not made to suppliers within 180 days of the invoice in a manner alike 2nd Proviso to Section 16(4) of The CGST Act 2017; it will act as a deterrent to delay payments and will help the MSMEs also. Further it can help in boosting tax revenues too.

**8. Taxation for Individuals -** The high personal tax rate for individuals in India stands out as an exceptionally high rate as compared to other countries. For example, the maximum rates of personal income in Hongkong is 15%, Sri Lanka – 18%, Bangladesh – 25% & Singapore – 22%. It has become an urgent necessity to reduce the personal tax rates for individuals so that there is a degree of equity and fairness in relation to structuring decisions as well as being competitive with other countries. It is suggested that the tax structure for individuals be simplified. This will also help in improving the compliance. Further, the standard deduction should be restored for employees opting for tax rates prescribed u/s 115BAC of the Act.

**9. Valuation of Company Owned Accommodation provided to employees under section 17(2) of the Act -** It is suggested that in case of company owned accommodation, the concept of fair value should be introduced for the purpose of determining perquisite value, so as to ensure that the employee is taxed on the

right value of this perquisite. Fair Value should be defined as the comparable rent in the location concerned.

**10. Taxing of Employee Stock Options (“ESOPs”) in the hands of the employees** - It is suggested that the taxation of ESOPs as perquisite at the time of exercise/ allotment / should be removed for the reasons explained in the Rationale column. In other words, **ESOP should NOT be taxed at the time of exercise**. In any event, any appreciation in value should only be taxed at the time of sale/ realization by the employees concerned under the head “Capital Gains”. Govt. of India has recently shifted the point of incidence of taxation of ESOPs for start-ups. Such a relaxation should be extended to ESOPs issued by all employer companies.

**11. Rationalization of tax rate for income of dividend earned by residents** - Similar to the reduction in surcharge on dividends to 15%, even the base rate of tax on Dividend Income should be capped at 10% (instead of the current 30%) in respect of resident shareholders.

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