

Direct Tax Vista

Your weekly Direct Tax recap

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1. Angel Tax exemptions notified

Vide Notification No. 29/2023 dated 24th May, three categories of entities are notified to have been retrospectively exempted from Sec 56(viib) since 1st April 2023. These are those entities which are registered with Sebi as Category-I FPI, Endowment Funds, Pension Funds and broad-based pooled investment vehicles, which are residents of 21 specified nations, including the US, UK, Australia, Germany and Spain. Important is that top jurisdictions like Singapore, Mauritius and UAE are excluded from the specified nations list - these three countries together constitute over 50% FDI in India.

Notification No. 30/2023 exempts start-up companies from the angel tax provision if the start-up company fulfils the conditions specified by DPIIT in para 4 of its Notification No. G.S.R 127(E) dated 19 February 2019 and files a self-declaration to that effect. The exemption is applicable where a start-up company issue shares for a consideration at a premium to any person (whether resident or non-resident). The said Notification comes into force retrospectively from 1 April 2023. It supersedes the earlier CBDT Notification No. 13/2019 which granted similar exemption to start-ups for issue of shares to resident investors.

It is pertinent to note that FDI from corporates other than start-ups continue to be under Angel tax Ambit. Most foreign companies have subsidiaries in India wherein capital is introduced from the foreign holding company. All these investments would come within the ambit of Section 56(2)(viib).

Now the draft Rules u/r 11UA have been issued for public comments too where 5 new valuation methods have been proposed for non-resident investors. The methods being – Comparable Company Multiple Method; Probability Weighted

Expected Return Method; Option Pricing Method; Milestone Analysis Method; and Replacement Cost Methods. Further 10% Safe harbor limit is introduced. Hence where the price at which shares are issued is higher than the value determined per Rule 11UA, but the difference doesn't exceed 10%, the issue price will be held as the fair market value. Suggestions/Comments have been invited from stakeholders & general public on the draft rules, which can be sent to ustpl2@nic.in latest by 5th June, 2023.

2. Leave Encashment bonanza for retiring/ resigning/ super-annuating employees

The Union Budget 2023 did not have anything for those in the old regime in Income Tax. However, there is good news from CBDT for those retiring/ leaving job/ taking super-annuation. Inline with the Union Budget 2023 announcement, the CBDT has issued Notification No.31/2023 dt 24.05.2023 increasing limit for tax exemption on leave encashment for non-government salaried employees to Rs.25 lakh w.e.f. 01.04.2023, from the earlier limit of Rs.3 Lakhs.

However, one should note the following 2 situations –

- a. If a non-government employee receives such payments from more than one employers within the same previous year, the aggregate amount exempt from income tax under section 10(10AA)(ii) of the Act should not exceed Rs. 25 lakh.
- b. If a non-government employee receives such payments from more than one employers in different previous years and has already taken an exemption earlier, the current exemption u/s 10(10AA)(ii) should be reduced by the said amount for the purpose of calculating the limit of Rs. 25 lakh.

3. Some relaxations for trusts after all

Provisions related to Trusts/NPOs/Charitable Institutions are the subject matter of constant changes over the past 3 years. The CBDT is bent on streamlining the Income Tax issues relating to trusts which are long pending; The Apex Court has also in a series of judgements held against the trusts. Trusts thus needed some

relaxations and the CBDT has provided a little vide Circular No. 6 of 2023, dated 24-05-2023, which announced a series of aspects which trusts should take note of.

It has extended the due date to file an application in Form No. 10A or Form No. 10AB till 30.09.2023, where the due date for making such application has expired prior to such date. Hence incase trusts have still not availed their RCs, they should avail of the same. However, incase they do not wish to renew their registration, then as per the amended Section 115TD, the accreted income of the trusts who have not applied for registration/ approval within the prescribed time limit will be taxed. This amendment has come into effect from 01.04.2023 and therefore applies to the assessment year 2023-24 and subsequent assessment years.

The CBDT has extended the due date for furnishing of statement of donation in Form No. 10BD and the certificate of donation in Form No. 10BE in respect of the donations received during the financial year 2022-23 to 30.06.2023. Many trusts who have not yet filed this statement should take the opportunity to file, otherwise the donations made would not be eligible for deduction to the donor.

It has been clarified that the provisional approval or provisional registration for section 10(23C), section 11 or section 80G, shall be effective from the assessment year relevant to the previous year in which the application is made and shall be valid for three assessment years subject to the provisions of the relevant sections.

It is clarified that the statement of accumulation in Form No. 10 and Form No. 9A must be furnished at least two months before the due date of furnishing the return of income so that it may be taken into account while auditing the books of account. However, the accumulation/deemed application shall not be denied to a trust as long as the statement of accumulation/deemed application is furnished on or before the due date of furnishing the return as per section 139(1).

The Auditor's Report furnished in Form No. 10B and Form No. 10BB requires the auditor to bifurcate certain payments or applications in electronic modes and non-electronic modes. It has been clarified that for the purposes of Form No. 10B and Form No. 10BB, electronic modes referred are in addition to the account payee

cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account.

4. Expenditure for re-export on grounds of commercial expediency are business expenses

An expenses incurred to rectify a violation under any other law, provided it is for business purpose cannot be disallowed u/s 37(1). What can be disallowed u/s 37(1) is the expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law. A penalty is an expenditure for a 'purpose which is an offence'; however an action like re-exporting considering the circumstances is an expenditure for a 'business purpose'.

Where Customs Authorities were not releasing rubber process oil imported by assessee and to avoid contesting the matter further, assessee chose to re-export rubber process oil without incurring further demurrage charges, To avoid any further litigation; and incurred huge loss on such re-export – Expenses incurred by assessee for import of rubber process oil, loss on price fluctuation, freight and retention charges cannot be considered as incurred for infraction of law. However penalty under Customs Act can be disallowed u/s 37(1) as was held in the case of INDIAN SYNTHETIC RUBBER PVT. LTD Vs ACIT, CIRCLE: 12 (1) NEW DELHI [2023-VIL-663-ITAT-DEL]

5. Vendor due diligence required for Income Tax also

Under GST, it is contended by recipients that they should not be held liable incase suppliers are defaulting payment of GST to the Govt. This has been an area of widespread litigation under the Indirect Taxes regimes. However, it is always advised to ensure physical presence of the suppliers at their place of business. Incase the suppliers are not so available, then not only GST-ITC but also income tax expenses can be disallowed as 'bogus purchase'. Where AO issues notice suppliers and they are returned unserved; Where Assessee is unable to produce any confirmation from any of parties; Where 'self' cheques are also encashed by some other parties and not by supposed suppliers; In such cases the purchase was considered to be bogus in the case of THREE C UNIVERSAL DEVELOPERS PVT LTD Vs ACIT, CENTRAL CIRCLE-6, NEW DELHI [2023-VIL-673-ITAT-DEL]

6. Income Tax Compulsory scrutiny notices to start flowing now as guidelines are in place

Notices u/s 143(2) will be served for all the cases selected for Compulsory Scrutiny, by 30.06.2023 as the Guidelines for compulsory selection of returns for Complete Scrutiny during the Financial Year 2023-24 have been issued on 24th May 2023. Like every year, the CBDT has released guidelines for the purpose of compulsory selection of returns for Complete Scrutiny during the Financial Year 2023-24 and the conduct of assessment proceedings in such cases. The government conducts massive data analytics to expand the tax base. This data along with information coming from GST and other agencies are used. The data is then tallied with the tax returns to assess if the income is adequately reflected or not, loss has been overstated or not or in any way has tax been underpaid.

The most critical Cases which would be selected for compulsory scrutiny are those related to specific information regarding tax evasion. Again, the question is how this "specific information" will be generated. The answer is that The Jurisdictional Assessing Officers (JAOs) shall prepare a list of cases falling under this parameter with prior administrative approval of Pr. CIT/Pr.DIT/CIT/DIT concerned. Hence, the assesses still need to keep the JAOs in good humour to ensure that their cases do not come up in compulsory scrutiny cases. Important to note is that the JAOs need to upload this specific information. However, a breather for assesseees is that the scrutiny would be undertaken by NaFAC.

However, the cases which are selected for compulsory scrutiny by the International Taxation and Central Circle charges, shall continue to be handled by International Taxation and Central Circle charges respectively, as earlier. These will not go to NaFAC.

The other cases which can be picked up for complete scrutiny are as follows -

- a) Cases where notice is issued under Section 148 – The same will be picked up whether or not the return has been filed pursuant to a notice u/s 148.

- b) Cases pertaining to survey under section 133A - If the income tax department has conducted a survey under Section 133A on the basis of the tax return filed. However, there are certain exclusions as well such as where the book of accounts, documents etc. were not collected.
- c) Cases pertaining to Search and Seizure - Where the income tax authorities have done search & seizure either prior to April 1, 2021 or after that will be picked for complete scrutiny.
- d) Cases where notice under section 142(1), calling for return, have been issued or no returns have been furnished.
- e) Cases related to registration/approval under sections 12A, 35, 10(23C), etc. - If the income tax department has not granted or cancelled registration / approval under section 12A, 12AB, 35(1)(ii)/(iia)/(iii), 1023(C) etc. and yet the taxpayer is found to be claiming tax exemption/deduction, their ITR will be picked for scrutiny. However, if the order of withdrawal/approval has been reversed or set aside in appellate proceedings, then such cases will be excluded under this clause.
- f) Cases involving additions in earlier AYs on a recurring issue of law and/or fact - Where the addition in an earlier assessment year(s) on a recurring issue of law or fact and/or law and fact (including transfer pricing issue) is: a) exceeding Rs 25 lakh in eight metro charges at Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata, Mumbai and Pune; b) exceeding Rs 10 lakh in charges other than eight metro charges. In addition to that, (i) has become final, as no further appeal has been preferred against the assessment order or (ii) has been upheld by the Appellate authorities in favour of revenue; even if further appeal of assessee is pending against such order.

Important to note is that where return has been furnished in response to notice u/s 142(1) of the Act and such notice u/s 142(1) of the Act was issued due to the information contained in NMS Cycle/ AIS/ Statement of Financial Transactions (SFT)/ CPC-TDS information/ information received from Directorate of I&CI, such return will not be taken up for compulsory scrutiny. Selection of such cases for scrutiny will be done through CASS cycle.

Earlier there was a criteria that there would not be compulsory scrutiny for those assessee also who declared a total income for the impugned assessment year which was more by a certain % of the total income returned for the earlier AY subject to certain conditions. Now the question arose that if the above requirements were fulfilled by the assessee, could the case not be taken up for sample scrutiny even incase the other balance sheet items were of high financial value and where the revenue would have doubts. It was held that If these criteria were fulfilled, then even if genuineness of Share application money, loans and advances taken or made, etc are prevalent, the case cannot be taken up for sample scrutiny - COMMISSIONER OF INCOME TAX, ROHTAK Vs M/s CRYSTAL PHOSPHATES LTD. [2023-VIL-50-P&H-DT]. Since last few years this criterion is no more there.

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