NANUBHAI DESAI & CO.

July 2020

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Contents

INCOME TAX

DOMESTIC TAXATION

Circulars/ Notifications/ Press Release

Clarification in relation to notification issued under clause (v) of proviso to section 194N of the Income-tax Act, 1961 (the Act) prior to its amendment by Finance Act, 2020 (FA, 2020)-Reg.

Section 194N of the Act as inserted by Finance (No.2) Act 2019 provided for deduction of tax at source on payment made by a banking company, a cooperative society engaged in the business of banking or post office, in cash to a recipient exceeding Rs. 1 crore in aggregate during a financial year from one or more account maintained by such recipient. Clause (v) of proviso to the said section had empowered the Central Government, in consultation with the Reserve Bank of India (RBI), to exempt by way of notification in Official Gazette, persons or class of persons so that payments made to such persons or class of persons shall not be subjected to TDS under this section. Accordingly, in exercise of the said power, Central Government has issued three notifications which are as under:

a) Notification 68 of 2019 dated 18.09.2019: Cash Replenishment Agencies (CRAs) and franchise agents of White Label Automated Teller Machine Operators (WLATMOs) for the purpose of replenishing cash in ATMs operated by these entities subject to conditions mentioned in the said notification
b) Notification 70 of 2019 dated 20.09.2019: Commission agent or trader operating under Agriculture Produce market Committee (APMC) and registered under any law relating to Agriculture Produce Market of the concerned State have been exempted subject to conditions specified in the said notification
c) Notification 80 of 2019 dated 15.10.2019: the authorized dealer and its franchise agent and sub-agent and Full Fledged Money Changer (FFMC) licensed by the Reserve Bank of India and its franchise agent for the purposes of,-
    a. Purchase of foreign currency from foreign tourists or non-residents visiting India or from resident Indians on their return to India, in cash as per the directions or guidelines issued by Reserve bank of India; or
    b. Disbursement of inward remillances to the recipient beneficiaries in India in cash under Money Transfer Service Scheme (MFSS) of the Reserve Bank of India; and subject to the conditions specified in the said notification.

Section 194N of the Act was amended by the Finance Act, 2020 (the FA, 2020) in order to make the provisions of the said section more stringent for non ITR filers. It is to note "that the clause (v) of the proviso to section 194N prior to its amendment has now become fourth proviso to the said section. Representations have been received seeking clarification regarding the validity of the above mentioned notifications in light of the amendments carried out by FA, 2020.

The matter has been examined by the Board and it is hereby clarified that the above mentioned three notifications shall be deemed to be issued under fourth proviso to section 194N as amended by the FA, 2020. It is further reiterated that the exemption allowed under the said notifications shall be subject to the conditions laid down therein.

(Circular No.14/2019, F. No. 370142/27/2020-TPL, dated 20th July, 2019)

S.O. 2232(E).— In exercise of the powers conferred by clause (xxv) of sub-section (2) of section 80C of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following scheme, namely:—

1. Short title and commencement.-

(1) This scheme may be called the National Pension Scheme Tier II- Tax Saver Scheme, 2020.

(2) It shall come into force from the date of its publication in the Official Gazettee.

2. Definitions.–

(1) In this scheme, unless the context otherwise requires,—

(a) "Act" means the Income-tax Act, 1961 (43 of 1961);

(b) “authority” means the Pension Fund Regulatory and Development Authority established under sub section (1) of section 3 of the Pension Fund Regulatory and Development Authority Act,2013 (23 of 2013);

(c) "investment" means contribution in an specified account by the Central Government employee in accordance with the scheme;

(2) The words and expressions used herein and not defined but defined in the Act shall have the same meaning as respectively, assigned to them in the Act.

3. Investment.-

(i) The assessee, being a Central Government employee, shall make contribution to the specified account which has been activated by the authority in accordance with the provisions of this scheme read with the operational guidelines, if any, issued by the authority in this regard on or after the date of commencement of this scheme.

(ii) The minimum amount of contribution to activate the specified account shall be one thousand rupees and minimum amount of subsequent contribution shall be two hundred and fifty rupees.

4. Lock- in-period.-

The contribution made under this scheme shall have a lock in period of three years from the date of credit of amount to the specified account.

5. Transferability.-

The contribution made to the specified account shall not be permitted to be assigned, pledged or hypothecated during the lock-in-period.

(Notification No. 45 /2020/F. No.370142/26/2019-TPL, dated 07th July, 2019)

S.O. 2380(E).—In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, 'Real Estate Regulatory Authority' as specified in the schedule to this notification, constituted by Government in exercise of powers conferred under sub-section (1) of section 20 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) as a 'class of Authority' in respect of the following specified income arising to that Authority, namely:-

a. Amount received as Grants-in-aid or loan/advance from Government;
b. Fee/penalty received from builders/developers, agents or any other stakeholders as per the provisions of the Real Estate (Regulation and Development) Act, 2016; and
c. Interest earned on (a) and (b) above.

This notification shall be effective subject to the conditions that each of the Real Estate Regulatory Authority,-

a. shall not engage in any commercial activity;
b. activities and the nature of the specified income shall remain unchanged throughout the financial years;
c. shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961; and
d. shall file the Audit report along with the Return, duly verified by the accountant as provided in explanation to section 288(2) of the Income-tax Act, 1961 along with a certificate from the chartered accountant that the above conditions are satisfied.

(Notification No. 49 /2020/F.No.300196/43/2019-ITA-I, dated 07th July, 2019)

Case laws

Principal CIT vs. Gujarat Narmada Valley Fertilizer and Chemicals Ltd. [2020] 422 ITR 164 (Guj.) Date of order: 16th July, 2019 A.Y.: 2010-11

Facts:

- The assessee was engaged in the business of manufacturing, sale and trading of chemical fertilizers and chemical industrial products. The company was also engaged in the business of information and technology. For the A.Y. 2010-11 the assessee claimed expenditure of Rs. 17,50,36,756 u/s 37(1). Such claim was put forward in fulfillment of its corporate social obligation and responsibility. The A.O. disallowed the claim. The Appellate Tribunal relied on its order passed for A.Y. 2009-10 and took the view that the assessee was entitled to claim deduction towards the expenditure incurred for discharging its corporate social responsibility u/s 37(1).

Issue:

Business expenditure – Section 37 of ITA, 1961 – General principles – Donations made by company under corporate social responsibility – Deductible u/s 37; A.Y. 2010-11

Held:

Held by the Tribunal:

- 'The word "business" used in section 37(1) in association with the expression "for the purposes of" is a word of wide connotation. In the context of a taxing statute, the word "business" would signify an organised and continuous course of commercial activity, which is carried on with the end in view of making or earning profits. Under section 37(1), therefore, the connection has to be established between the expenditure incurred and the activity undertaken by the assessee with such object. The concept of business is not static. It has evolved over a period of time to include within its fold the concrete expression of care and concern for society at large and the people of the locality in which the business is located in particular. It is not open to the Court to go behind the commercial expediency which has to be determined from the point of view of a businessman.

- The test of commercial expediency cannot be reduced to a ritualistic formula, nor can it be put in a water-tight compartment. As long as the expenses are incurred wholly and exclusively for the purpose of earning income from the business or profession, merely because some of these expenses are incurred voluntarily, i.e., without there being any legal or contractual obligation to incur them, those expenses do not cease to be deductible in nature.
- Explanation 2 to section 37(1) comes into play with effect from 1st April, 2015. This disallowance is restricted to the expenses incurred by the assessee under a statutory obligation u/s 135 of the Companies Act, 2013, and there is thus now a line of demarcation between expenses incurred by the assessee on discharging corporate social responsibility under such a statutory obligation and under a voluntary assumption of responsibility. As for the former, the disallowance under Explanation 2 to section 37(1) comes into play, but for the latter there is no such disabling provision as long as the expenses, even in discharge of corporate social responsibility on voluntary basis, can be said to be "wholly and exclusively for the purposes of business".
- The assessee company was a polluting company. The assessee company was conscious of its social obligations towards society at large. The assessee company was a Government undertaking and, therefore, obliged to ensure fulfilment of all the protective principles of State policy as enshrined in the Constitution of India. The moneys had been spent for various purposes and could not be regarded as outside the ambit of the business concerns of the assessee. The order passed by the Appellate Tribunal was just and proper and needed no interference in the present appeal.'

[2020] 116 taxmann.com 565 (Mum.)(Trib.) DCIT vs. JSW Ltd. ITA Nos. 6103 & 6264/Mum/2018 A.Y.: 2013-14 Date of order: 14th May, 2020

Facts:

- In this case, the hearing of the appeal was concluded on 7th January, 2020 whereas the order was pronounced on 14th May, 2020, i.e. much after the expiry of 90 days from the date of conclusion of hearing. The Tribunal, in the order, suo-motu dealt with the procedural issue of the order having been pronounced after the expiry of 90 days of the date of conclusion of the hearing. The Tribunal noted the provisions of Rule 34(5) and dealt with the same.

Issue:

Rule 34 of the Income-tax Appellate Tribunal Rules – The period of 90 days prescribed in Rule 34(5) needs to be computed by excluding the period during which lockdown was in force

Held:

Held by the Tribunal:

- The Tribunal noted that Rule 34(5) was inserted as a result of the directions of the Bombay High Court in the case of Shivsagar Veg Restaurant vs. ACIT [(2009) 317 ITR 433 (Bom.)]. In the rule so framed as a result of these directions, the expression 'ordinarily' has been inserted in the requirement to pronounce the order within a period of 90 days. It observed that the question then arises whether the passing of this order beyond 90 days was necessitated by any 'extraordinary' circumstances.
- It also took note of the prevailing unprecedented situation and the order dated 6th May, 2020 read with the order dated 23rd March, 2020 passed by the Apex Court, extending the limitation to exclude not only this lockdown period but also a few more days prior to, and after, the lockdown by observing that 'In case the limitation has expired after 15th March, 2020 then the period from 15th March, 2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown'.
- The Tribunal also noted that the Hon'ble Bombay High Court, in an order dated 15th April, 2020 has, besides extending the validity of all interim orders, also observed that, 'It is also clarified that while calculating time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March, 2020 continues to operate shall be added and time shall stand extended accordingly', and also observed that the 'arrangement continued by an order dated 26th March, 2020 till 30th April, 2020 shall continue further till 15th June, 2020'.
- The extraordinary steps taken suo-motu by the Hon'ble jurisdictional High Court and the Hon'ble Supreme Court also indicate that this period of lockdown cannot be treated as an ordinary period during which the normal time limits are to remain in force.
- The Tribunal held that even without the words 'ordinarily', in the light of the above analysis of the legal position, the period during which lockout was in force is to be excluded for the purpose of time limits set out in Rule 34(5) of the Appellate Tribunal Rules, 1963.

- The order was pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

INTERNATIONAL TAXATION

Case Laws

AAR No. 1555 to 1564 of 2013 A to J, In Re

Facts

- In F.Y. 2013-14, Applicant 1 (buyer, a Jersey-based company) and Applicant 2 (sellers / shareholders based in the US, UK, Hong Kong and Cayman Islands) entered into a transaction for sale of 100% shares of a British Virgin Islands-based company (BVI Co). Individually, each seller had less than 5% shareholding in BVI Co.
- BVI Co was a multinational company and had subsidiaries across the globe. It indirectly held 100% shares in an Indian company (I Co) through a Mauritian company (Mau Co). The sellers submitted the valuation report of the shares of BVI Co, as per which the value derived directly or indirectly from assets located in India was 26.38%. The applicants approached AAR in December, 2013 with respect to taxability arising in India as regards the transfer of the shares of BVI Co.
- Indirect transfer provisions were introduced in the Act in 2012. These were amended in 2015 by introducing Explanation 6 and Explanation 7 to section 9(1)(i). The amended provisions provided the following benchmarks:
    - 50% value threshold to ascertain substantial value of foreign shares or interest, from assets in India (50% threshold).
    - Proportionate tax (i.e., to the extent of value of assets in India).
    - Indirect provisions not to apply to shareholders having less than 5% shareholding, or voting power, or interest in foreign company or entity, if they have not participated in management and control during the 12-month period preceding the date of transfer (small shareholder exemption).
- The question before the AAR was whether amendments made in 2015 could be applied to a transaction retrospectively?

Issue:

Explanations 6 and 7 to section 9(1)(i) of the Act – Indirect transfer tests of 50% threshold of 'substantial value' (Explanation 6) and small shareholder (Explanation 7) are to be applied retrospectively

Held

- From 2012 to 2015, the term 'substantially' was statutorily not defined, though it was interpreted by the High Court1 and the AAR. Both rulings held that the term 'substantially' would only include a case where shares of a foreign company derived at least 50% of their value from assets in India.
- The provision inserted in 2015 begins with the expression 'for the purposes of this clause, it is hereby declared...'. Relying on the principles of statutory interpretation dealing with declaratory states, AAR held that declaratory or curative amendments made 'to explain' an earlier provision of law should be given retrospective effect.
- Explanation 6 pertaining to 50% threshold is clarificatory in nature. Similarly, Explanation 7 pertaining to small shareholder exemption is inserted to address genuine concerns of small shareholders. Hence, both should apply retrospectively to give a true meaning and make the indirect provisions workable.
- The AAR concluded on principles and did not adjudicate on valuation. It held that tax authorities could scrutinise the valuation report to ascertain whether it met the 50% threshold and satisfied the conditions of small shareholders exemption.

[2020] 116 taxmann.com 878 (AAR-N. Del.) Tiger Global International II Holdings, In re Date of order: 26th March, 2020

Facts:

- The applicants were three Mauritius companies (Mau Cos), which were tax resident of Mauritius. They were member companies of a private equity fund based in USA. Mau Cos collectively invested in shares of a Singapore Company (Sing Co). Sing Co, in turn, invested in multiple Indian companies. Sing Co derived substantial value from assets located in India. All investments were made prior to 31st March, 2017. The Mau Cos transferred their shares in Sing Co to an unrelated Luxembourg buyer pursuant to contracts executed outside India.
- Before executing the transfer of shares, the applicants applied to tax authorities for nil withholding certificate u/s 197. The applications were rejected on the ground that the applicants did not qualify for benefit under the India-Mauritius DTAA.
- The applicants subsequently approached the AAR to determine the chargeability of share transfer transaction to income tax in India. The tax authorities objected to the admission of the application.

Issue:

Article 13 of India-Mauritius DTAA; section 245R of the Act – As gain on sale of shares by a Mauritius company in a Singapore company which derived substantial value from assets in India was, prima facie, designed for avoidance of tax, applications were to be rejected under clause (iii) to proviso to section 245R(2) of the Act

Held:

Pending proceedings

- Proceedings relating to issue of nil withholding certificate are concluded when the certificate was issued by the tax authority.
- Even if the tax withholding certificate was applicable for the entire financial year and could have been modified, it could not be given effect to after the transaction was closed and payment was made.
- Accordingly, there was no pending proceeding on the date of making the application to the AAR.

Application before AAR was concerned only with chargeability to tax and question of determination of FMV did not arise

- The applications pertained only to determination of taxability of transfer of shares.
- Tax authority can undertake valuation of shares and computation of capital gains arising from shares only after the transaction is found to be exigible to tax. Therefore, the application cannot be rejected on this ground.

Prima facie avoidance of tax

- At the stage of admission of the application before the AAR, there is no requirement to conclusively establish tax avoidance; rather, it only needs to be demonstrated that prime facie the transaction was designed for avoidance of tax.
- The following factors established that the control and management of the Mau Cos was not in Mauritius:
    - Authorisation to operate bank account above US $250,000 was with Mr. C who was not a Director of the Mau Co but was the ultimate owner of the PE Fund.

- Since the applicants were located in Mauritius, logically a Mauritius resident should have been authorised to sign cheques and operate bank accounts. However, the applicants could not justify why Mr. C was authorised to do so.
- Since Mr. C was the beneficial owner of the parent company of the applicants and also the sole director of the ultimate holding company, the authorisation given to him was not coincidental. This fact established that the funds were controlled by Mr. C.
- Further, Mr. S (US resident general counsel of the PE fund) was present in all the Board meetings where decisions on investment and sale of securities were taken. Despite this, decisions in respect of any transaction over US $250,000 were taken by Mr. C. This suggested that notwithstanding that decisions were undertaken by the Board of Directors of the applicants, these were ultimately under the control of Mr. C because of his power to operate bank accounts.
- Thus, the real management and control of the applicants was not with the Board of Directors, but with Mr. C who was the beneficial owner of the group. The Mau Cos were only pass-through entities set up to avail the benefits of the India-Mauritius DTAA.

- Hence, prima facie, the transaction was designed for avoidance of tax and, accordingly, it could not be admitted.

Applicability of India-Mauritius DTAA

- The Mau Cos derived gains from transfer of shares of the Sing Co and not those of the I Cos. The India-Mauritius DTAA (post-2016 amendment), as also Circular No. 682 dated 30th March, 1994 suggest that the intent of the DTAA is only to protect gains from transfer of shares of an Indian company and not transfer of shares of a Singapore company. Exemption from capital gains tax on sale of shares of a company not resident in India was never intended under the original or the amended DTAA between India and Mauritius.

REGULATION GOVERNING INVESTMENTS

FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

Extension of time limits for Settlement of import payment A.P. (DIR Series) Circular No.33 dated 22nd May, 2020

In view of the disruptions due to outbreak of COVID- 19 pandemic, RBI has extended the time period for completion of remittances against such normal imports (except in cases where amounts are withheld towards guarantee of performance etc.) from six months to twelve months from the date of shipment for such imports made on or before July 31, 2020.

Amendments to Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations Notification No. FEMA 395(1)/2020-RB dated 15th June 2020

RBI has made following amendments to FEM (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 by issue of the FEM (Mode of Payment and Reporting of Non - Debt Instruments) (Amendment) Regulations, 2020:

I. The existing provision at Sr. No. II (Investments by Foreign Portfolio Investors) of Regulation 3.1 is substituted by the following:

A. Mode of Payment:

(1) The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in a foreign currency account and / or a Special Non-Resident Rupee (SNRR) account maintained in accordance with FEM Deposit Regulations, 2016.

(2) Unless otherwise specified in these regulations or relevant schedules, the foreign currency account and SNRR account shall be used only and exclusively for transactions under this schedule.

B. Remittance of sale proceeds:

The sale proceeds (net of taxes) of equity instruments and units of REITs, InViTs and domestic mutual funds may be remitted outside India or credited to foreign currency account or SNRR account of the FPI."

II. The existing provision at para A (2) of Sr. No. VII (Investment by a Foreign Venture Capital Investor) of Regulation 3.1 is substituted by the following:

"Unless otherwise specified in these regulations or the relevant Schedules, the foreign currency account and SNRR account shall be used only and exclusively for transactions under this Schedule."

III. The existing provision at Sr. No. VIII (Investment by a person resident outside India in an Investment Vehicle) is substituted by the following:

A. Mode of Payment:

The amount of consideration shall be paid as inward remittance from abroad through banking channels or by way of swap of shares of a Special Purpose vehicle or out of funds held in NRE or FCNR(B) account maintained in accordance with Deposit Regulations. Further for an FPI or FVCI, amount of consideration may be paid out of their SNRR account for trading in units of Investment Vehicle listed or to be listed (primary issuance) on the stock exchanges in India.

B. Remittances of sale/maturity proceeds:

The sale/maturity proceeds (net of taxes) of the units may be remitted outside India or may be credited to NRE or FCNR(B) or SNRR account, as applicable of the person concerned."

COMPANY LAW

MCA deploys e-Form PAS-6 under Rule 9A (8) of PAS Rules

- The Ministry of Corporate Affairs (MCA) has deployed e-Form PAS-6 under Rule 9A (8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014
- The Form was introduced by the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2019 (effective from 30.09.2019) and was required to be filed on a half-yearly basis within 60 days from the conclusion of each half year.
- Due to failure to deploy the Form within adequate time, MCA vide circular dated 28.11.2019 extended the due date for filing this Form for half year ended 30.09.2019 to 60 days from the date of deployment of the Form on website of Ministry.
- The Form has been deployed w.e.f. 15.07.2020. Thus, unlisted public companies, except above-mentioned, are required to file e-Form PAS-6 within 60 days from 15.07.2020 i.e. 13.09.2020 for half year ended:
    - 30th September, 2019 owing to circular dated 28.11.2019 and
    - 31st March, 2020 as no specific instruction or clarification has been provided, the same timeline should apply.

Companies (Indian Accounting Standards) Amendment Rules, 2020

- The Ministry of Corporate Affairs (MCA) has amended Indian Accounting Standards (Ind-AS) 103, 116 and a few others to provide relief to businesses in the wake of the Covid-19 pandemic.
- List of Ind AS that have been amended vide the notification:
    - Indian Accounting Standard (Ind AS) 103 - Business Combinations
    - Indian Accounting Standard (Ind AS) 107 - Financial Instruments: Disclosures
    - Indian Accounting Standard (Ind AS) 109 - Financial Instruments
    - Indian Accounting Standard (Ind AS) 116 - Leases
    - Indian Accounting Standard (Ind AS) 1 - Presentation of Financial Statements
    - Indian Accounting Standard (Ind AS) 8 - Accounting Policies, Changes in Accounting Estimates and Errors
    - Indian Accounting Standard (Ind AS) 10 - Events after the Reporting Period

ACCOUNTS & AUDIT

Insider Trading Regulations

SEBI through a notification dated 17 July 2020 has issued certain amendments to the Insider Trading Regulations. The key amendments are as follows:

- **Maintenance of structured digital database**: As per the amendment, in addition to the board of directors, **head(s) of the organisation of every person** required to handle Unpublished Price Sensitive Information (UPSI) should ensure that a structured digital database is maintained. The database should contain the **nature of the UPSI, names of persons who have shared the information** and also names of persons with whom information is shared along with the Permanent Account Number (PAN) or any other authorised identifier in the absence of PAN. The database **should not be outsourced and should be maintained internally** with adequate internal controls and checks such as time stamping and audit trails to ensure nontampering of the database.

- Preservation of database: The structured digital database is required to be preserved for a period of at least eight years after completion of the relevant transactions. In the event of receipt of any information from SEBI regarding any investigation or enforcement proceedings, the relevant information in the structured digital database should be preserved till the completion of such proceedings.
- Code of conduct: The code of conduct formulated by the listed company to monitor trading by designated persons should specify that in case of any violation of the provisions of the Insider Trading Regulations, it would promptly inform to the stock exchange(s) where concerned securities are traded in such form as may be specified (earlier the requirement was to inform SEBI).

Further, any amount collected on account of disciplinary actions, including wage freeze, suspension, recovery, is required to be remitted to SEBI for credit to the Investor Protection and Education Fund.

(Source: SEBI notification no. SEBI/LAD-NRO/ GN/2020/23 dated 17 July 2020)

Clarification on implementation of Ind AS by NBFCs and ARCs

Background

On 13 March 2020, the RBI issued regulatory guidance for implementation of Ind AS by NBFCs and Asset Reconstruction Companies (ARCs). The guidance, inter alia, provides manner of determination of 'owned funds', 'net owned funds' and 'regulatory capital'. According to it, any net unrealised gains arising on fair valuation of financial instruments should be reduced from owned funds, however, net losses should be considered.

New development

The RBI through a notification dated 24 July 2020 has clarified that the unrealised gain/loss on a derivative transaction undertaken for hedging is permitted to be offset against the unrealised loss/gain recognised in the capital (either through profit or loss or through other comprehensive income) on the corresponding underlying hedged instrument.

However, if after such offset and netting with unrealised gains/losses on other financial instruments, there are still net unrealised gains, the same should be excluded from regulatory capital. It further clarified that the unrealised gains/losses would be considered net of the effect of taxation.

(Source: RBI notification no. RBI/2020-2021/15 dated 24 July 2020)

RBI issued revised instructions for credit flow to MSME sector

Basis the revised definition of Micro, Small and Medium Enterprises (MSME) notified by the Ministry of MSME, RBI through a notification dated 2 July 2020 has updated instructions relating to credit flow to MSME sector by banks, All-India Financial Institutions and NBFCs. The instructions, inter alia, includes:

- Composite criteria of investment and turnover for classification
- Calculation of investment in plant and machinery or equipment and
- Calculation of turnover.

The revised instructions supersede the instructions issued by RBI on 4 April 2007 except those relating to delayed payment to micro and small enterprises.

(Source: RBI notification no. RBI/2020-2021/10 dated 2 July 2020)

GOODS AND SERVICE TAX

CBIC vide notification 46/2020-CT dated 9th June, 2020 has extended the time limit for issuance of order in terms of provision of section 54(5) read with section 54(7) in cases where notice has been issued for rejection of refund claim, in full or part & time limit of such order falls during period 20th March, 2020 to 29th June, 2020. In such cases, the time limit for issuance of said order shall be 15 days after the reply to notice from registered person or 30th June, 2020 whichever is later.

CBIC vide circular number 140/10/2020-GST dated 10th June, 2020 has clarified that part of Director's remuneration which are declared as "Salaries" in the books of company & subject to TDS under Section 192 of Income Tax Act, are not subject to GST & not treated as supply in terms of schedule III of CGST Act, 2017 It is further clarified that the part of employee Director's remuneration which is declared separately other than, "salaries" in the Company's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. Further, in terms of notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

CBIC Vide circular number 139/09/2020-GST dated 10th June, 2020 has clarified that Circular No.135/05/2020 – GST dated the 31st March, 2020 which states that:

"5. Guidelines for refunds of Input Tax Credit under Section 54(3)

5.1 In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.

5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the circular No. 125/44/2019- GST, dated 18.11.2019 stands modified to that extent."

CBIC has clarified that before the issuance of Circular No. 135/05/2020- GST dated 31st March, 2020, refund was being granted even in respect of credit availed on the strength of missing invoices (not reflected in FORM GSTR-2A) which were uploaded by the applicant along with the refund application on the common portal. However, vide Circular No.135/05/2020 – GST dated the 31st March, 2020, the refund related to these missing invoices has been restricted. Now, the refund of accumulated ITC shall be restricted to the ITC available on those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. The aforesaid circular does not in any way impact the refund of ITC availed on the invoices / documents relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) etc.. It is hereby clarified that the treatment of refund of such ITC relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) will continue to be same as it was before the issuance of Circular No. 135/05/2020- GST dated 31st March, 2020.

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