Nanubhai Desai & Co.

May 2020

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INCOME TAX

DOMESTIC TAXATION

Circulars/ Notifications/ Press Release

Clarification in respect of residency under section 6 of the Income-tax Act, 1961

- Section 6 of the Income-tax Act, 1961 (the Act) contains provisions relating to determination of residency of a person. The status of an individual, as to whether he is resident in India or a non-resident or not ordinarily resident, is dependent, inter-alia, on the period for which the person is in India during a previous year or years preceding the previous year.
- Various representations have been received stating that there are number of individuals who had come on a visit to India during the previous year 2019-20 for a particular duration and intended to leave India before the end of the previous year for maintaining their status as nonresident or not ordinary resident in India. However, due to declaration of the lockdown and suspension of international flights owing to outbreak of Novel Corona Virus (COVID-19), they are required to prolong their stay in India. Concerns have been expressed that this extra stay in India may make them a resident of India under section 6 of the Act.
- In order to avoid genuine hardship in such cases, the Board, in exercise of powers conferred under section 119 of the Act, has decided that for the purpose of determining the residential status under section 6 of the Act during the previous year 2019-20 in respect of an individual who has come to India on a visit before 22nd March, 2020 and:
  a. has been unable to leave India on or before 31st March, 2020, his period of stay in India from 22nd March, 2020 to 31st March, 2020 shall not be taken into account; or
  b. has been quarantined in India on account of Novel Corona Virus (Covid-19) on or after 1st March, 2020 and has departed on an evacuation flight on or before 31st March, 2020 or has been unable to leave India on or before 31st March, 2020, his period of stay from the beginning of his quarantine to his date of departure or 31st March, 2020, as the case may be, shall not be taken into account; or.
  c. has departed on an evacuation flight on or before 31st March, 2020, his period of stay in India from 22nd March, 2020 to his date of departure shall not be taken accounts

  (Circular No.11/2020, dated 08 May, 2020)

Clarifications in respect of prescribed electronic modes under section 269SU of the Income-tax Act, 1961

- In furtherance to the declared policy objective of the Government to encourage digital transactions and move towards a less-cash economy, a new provision namely Section 269SU was inserted in the income-tax Act, 1961 ("the Act"), vide the Finance (No.2) Act 2019. This section requires every person carrying on business and having sa les/turnover/gross receipts from business of more than Rs 50 Crores ("specified person") in the immediately preceding previous year to mandatorily provide facilities for accepting payments through prescribed electronic modes. Subsequently vide notification no. 105/2019 dated 30.12.20 19 (i) Debit Card powered by RuPay; (ii) Unified Payments Interface (UPI) (BH IM-UPI); and (iii) Unified Payments Interface Quick Response Code (UPI QR Code) (BHIM-UPI QR Code) were notified as prescribed electronic modes.
- Representations have been received stating that the above requirement of mandatory facility for payments through the prescribed electronic modes is generally applicable in B2C (Business to Consumer) business's, which directly deal with retail customers. Moreover, since the prescribed electronic modes have a maximum payment limit per transaction or per day they are not so relevant to B2B (Business to Business) businesses, which generally receive large payments through other electronic modes of payment such as NEFT or RTGS. Mandating such businesses to provide the facility for accepting payments through prescribed electronic modes would cause administrative inconvenience and impose additional costs.
- In view of the above, it is hereby clarified that the provisions of section 269SU of the Act shall not be applicable to a specified person having only B2B transaction s (i.e. no transaction with retail customer/consumer) if at least 95% of aggregate of all amounts received during the previous year, including amount received for sales, turnover or gross receipts, are l b mo other than cash.
  (Circular No.12/2020, dated 20th May, 2020)

Section 11 of the Income-tax Act, 1961

- Under the provisions of Section 11 of the Income-tax Act, 1961 (hereafter 'Act') the primary condition for grant of exemption to trust or institution in respect of income derived from property held under such trust or institution is that the income derived from property held under trust or institution should be applied during the previous year, and it has to be accumulated and applied for such purposes in accordance with various conditions provided in the section.

- The Finance Act, 2015 amended section 11 and section 13 of the Act with effect from 1-4-2016 (Assessment Year 2016-17). Consequently, Income-tax Rules, 1962 (hereafter 'Rules') were also amended vide the Income-tax (1st Amendment) Rules, 2016. As per the amended provisions of the Act read with rule 17 of the Rules, while 15% of the income can be accumulated indefinitely by the trust or institution, 85% of income can only be accumulated for a period not exceeding 5 years subject to the conditions, inter alia, that such person submits the prescribed Form No. 10 electronically to the Assessment Officer within the due-date specified under section 139(1) of the Act.
- Further, where the income from property held under trust or institution applied to charitable or religious purposes falls short of 85% of the income derived during the previous year for the reason that the income has not been received during that year or any other reason, then on the exercise of the option by submitting in Form. No. 9A electronically by the trust or institution on or before the due-date of furnishing the return of income, such income shall be deemed to have been applied for charitable or religious purpose.
- Representations have been received by the Board/field authorities stating that Form No. 9A and Form No. 10 could not be filed along with the return of income starting from AY. 2016-17, which was the first year of e-filing of these forms, and for subsequent assessment years also. It has been requested that the delay in filing of Form No. 9A and Form No. 10 may be condoned under section 119(2)(b) of the Act.
- Accordingly, in suppression of earlier Circulars/Instructions issued in this regard, with a view to expedite the disposal of application filed by the trust or institution for condoning the delay and in exercise of the powers conferred under section 119(2)(b) of the Act, the Central Board of Direct Taxes has already authorized the Commissioners of Income-tax to admit belated applications in Form No. 9A and Form No. 10 in respect of Assessment Year 2016-17 and Assessment Year 2017-18 where such Form No. 9A and Form No. 10 are filed after the expiry of the time allowed under the relevant provisions of the Act vide Circular No. 7/2018 dated 20-12-2018 and Circular No. 30/2019 dated 17- 12-2019 both issued vide F.No. 197/55/2018-ITA-I.
- In addition to the above, it has also been decided by the CBDT that where there is delay of up to 365 days in filing Form No. 9A and Form No. 10 for Assessment Year 2018-19 or for any subsequent Assessment Years, the Commissioners of Income-tax are hereby authorized to admit such belated applications of condonation of delay under section 13 9(2) of the IT Act and decide on merits.
- The Commissioners of Income-tax shall, while entertaining such belated applications in Form No. 9A and Form No. 10, satisfy themselves that the assessee

was prevented by reasonable cause from filing of applications in Form No.9A and Form No. 10 within the stipulated time. Further, in respect of Form No. 10, the Commissioners shall also satisfy themselves that the amount accumulated or set apart has been invested or deposited in any one or more of the forms or modes specified in sub-section (5) of Section 11 of the Act.

(Circular No.3/2020, dated 03rd January, 2020)

Case laws

Tata Industries Ltd. vs. Deputy Commissioner of Income-tax, Circle-(3)(1), Mumbai, May 27, 2020

Facts:

- The Assessing Officer noticed that while the assessee-company had a tax-exempt dividend income of Rs. 62,07,41,055, the assessee had offered disallowance under section 14A for only Rs. 6,18,69,000. When Assessing Officer sought justification for this quantum of disallowance, it was explained by the assessee that there was no interest cost during year, that the related expenditure of disallowance under section 14A was only out of 'project and investment department' forming part of the head office and that entire expenditure could not be said to relatable to earning of tax exempt income.
- Assessing Officer opined that the expenditure incurred for project and investment department constituted direct expenditure incurred in relation to investments held in shares and, hence, it was to be disallowed under rule 8D(2)(i) being in addition to disallowance made under rule 8D(2)(iii). He then proceeded to compute the disallowance under section 14A read with rule 8D, which was 0.5 per cent of the average investments held by the assessee and Assessing Officer reduced the suo motu disallowance offered of, and added, the remaining to the income returned by the assessee.
- The Commissioner (Appeals) upheld, in principal, the rejection of suo motu disallowance offered by the assessee but gave some partial relief on the computation part.

Issue:

Assessing Officer can resort to rule 8D only when, as per prescription of section 14A(2) he is not satisfied with correctness of claim of assessee in respect of expenditure in relation to income which does not form part of total income under Act and that satisfaction cannot be on basis of mechanism of rule 8D itself; it has to be independent of rule 8D

Held:

- Assessee has given a reasonable explanation about the quantification of his suo motu disallowance, and the Assessing Officer has not pointed out any specific defects in the same. What was pointed out by the assessee that 'at best' entire expenses of project and investment department could be treated as 'expenditure incurred by the assessee in relation to income which does not form part of the total income'. It is so for the reason that the project and investment department is only department which deals with identifying the opportunities and growth in diverse business opportunities, and thus identifying investment opportunities is one of its functions, and that no other department of this company deals with the matters relating to investments in shares. The Assessing Officer has rejected this explanation on the ground that as the expenditure incurred for project and investment department constitutes direct expenditure incurred in relation to investments held in shares, it is to be disallowed under rule 8D(2)(i) being in addition to disallowance made under rule 8D(2)(iii). That's where he fell in error.
- The Assessing Officer cannot reject the suo motu disallowance offered by the assessee on the ground that such a disallowance under rule 8D will be more; that's putting cart before the horse. Quite to the contrary, an Assessing Officer can resort to rule 8D only when, as per the prescription of section 14A(2) the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act. That satisfaction, for invoking rule 8D, cannot be on the basis of mechanism of rule 8D itself; it has to be independent of rule 8D. Rule 8D(1) also provides that where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied inter alia, with—(a) the correctness of the claim of expenditure made by the assessee, in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2). That exercise is clearly not carried out. The Assessing Officer has noted the explanation of the assessee and proceeded to disregard the same on the basis of working of rule 8D(2)(i) and 8D(2)(iii). There is no other, and in fact no, reason for rejection of the computation of disallowance by the assessee. As a matter of fact, on the facts of this case, there is not even a whisper of the reason, barring reference to rule 8D(2)(i), for rejecting the suo motu disallowance offered by the assessee. On these facts, and for the detailed reasons set out above, the Assessing Officer

was in error in invoking rule 8D(2). Therefore, it is deemed fit and proper to direct the Assessing Officer to delete the impugned additional disallowance under section 14A read with rule 8D, and to accept the suo motu disallowance of Rs. 6,18,69,000 offered by the assessee. [Para 7].

Aranattukara Oriental Service Co-Operative Bank Ltd.vs Commissioner of Income-tax May 25, 2020

Facts:

- Section 249 of the Income-Tax Act, 1961 - Commissioner (Appeals) - Form of appeal and limitation (Pre-deposit of tax) - Assessment year 2017-18
- ITO issued a notice under section 156 to assessee-co-operative society pertaining to relevant assessment year
- Assessee preferred appeal before Commissioner (Appeals) along with a stay application - Whether Commissioner (Appeals) was to decide appeal on merits without asking for 20 per cent of demanded amount

Issue:

Commissioner (Appeals) was directed to decide appeal and stay application of assessee-co-operative society without asking for deposit of 20 per cent of tax demand

Held:

- Petitioner is a primary Co-operative Agricultural Credit Society registered under the Kerala Co-operative Societies Act. Petitioner is an assessee on the file of the 2nd respondent. While so, the 2nd respondent issued a notice under section 156 of the Income tax Act pertaining to the assessment year 2017-18:
- Aggrieved by the assessment order petitioner preferred appeal before the 1st respondent along with a stay application. It is submitted that neither the appeal nor stay petition has been considered by the respondents. Apprehending coercive action, petitioner has approached this Court by filing this writ petition. In this regard he relied upon the judgment of the Division Bench of this Court in Angadippuram Service Co-op. Bank Ltd. v. CIT [writ appeal No.1536 of 2019 dated 1.7.2019] arising out of judgment Kodur Service Co-op. Bank Ltd. v. CIT W.P.(C)12843/19 dated 31-5-2019. The Division Bench after noticing the decision of the Full Bench of this Court in [IT Appeal

No.97/16 and connected cases, decided on 19.3.2019 titled as Mavilayi Service Co-operative Bank Ltd. v. CIT 2019 (2) KHC 287, wherein for considering the appeal the demand of 20% as a condition precedent has been negated.

- Issue notice before admission. Sri.Jose Joseph accepts notice on behalf of the income tax authorities. He submits that the order is in consonance with the provisions of section 144 of the Income-tax Act and the Circular dated 31-7-2017 mandating the appellate authorities to ask for deposit 20% of the amount for the purpose of entertaining the adjudication of the appeal.
- Having heard learned Counsel for the parties and appraised the paper book, I am of the view that the argument of the petitioner is in consonance with findings rendered in the judgment referred to above and reiterated by the Division Bench. The assessing officer or the appellate authority while exercising the power of appeal or stay of the assessment proceedings under section 226 of the Income-tax Act 1961 are enjoined obligation to give regard and respect to the directions of the Hon'ble High Court. In other words, it would not be necessary that the payment of 20% can be dispensed with only if there is an order of the high court. The judgment of the Full Bench followed by the Division Bench has an enuring effect on all the authorities.
- There will be a direction to the 1st respondent to decide the appeal on merits within a period of six months, without asking for 20% of the demanded amount, after affording an opportunity of hearing to the petitioner and the revenue and pass a reasonable and speaking order.

INTERNATIONAL TAXATION

Circulars/ Notifications/Press Release

SECTION 6 OF THE INCOME-TAX ACT, 1961 - RESIDENTIAL STATUS - CLARIFICATION OF RESIDENCY UNDER SAID SECTION

- Section 6 of the Income-tax Act, 1961 (the Act) contains provisions relating to determination of residency of a person. The status of an individual, as to whether he is resident in India or a non-resident or not ordinarily resident, is dependent, inter-alia, on the period for which the person is in India during a previous year or years preceding the previous year.
- Various representations have been received stating that there are number of individuals who had come on a visit to India during the previous year 2019-20 for a particular duration and intended to leave India before the end of the previous year for maintaining their status as nonresident or not ordinary resident in India. However, due to declaration of the lockdown and suspension of international flights owing to outbreak of Novel Corona Virus (COVID-19), they are required to prolong their stay in India. Concerns have been expressed that this extra stay in India may make them a resident of India under section 6 of the Act.
- In order to avoid genuine hardship in such cases, the Board, in exercise of powers conferred under section 119 of the Act, has decided that for the purpose of determining the residential status under section 6 of the Act during the previous year 2019-20 in respect of an individual who has come to India on a visit before 22nd March, 2020 and:
  a. has been unable to leave India on or before 31st March, 2020, his period of stay in India from 22nd March, 2020 to 31st March, 2020 shall not be taken into account; or
  b. has been quarantined in India on account of Novel Corona Virus (Covid-19) on or after 1st March, 2020 and has departed on an evacuation flight on or before 31st March, 2020 or has been unable to leave India on or before 31st March, 2020, his period of stay from the beginning of his quarantine to his date of departure or 31st March, 2020, as the case may be, shall not be taken into account; or
  c. has departed on an evacuation flight on or before 31st March, 2020, his period of stay in India from 22nd March, 2020 to his date of departure shall not be taken into account.

(Circular No.11/2020, dated 08 May, 2020)

NEW PROCEDURE FOR REGISTRATION, APPROVAL, ETC. OF CERTAIN ENTITIES DEFERRED TO 1-10-2020

- In view of the unprecedented humanitarian and economic crisis, the CBDT has decided that the implementation of new procedure for approval/ registration/notification of certain entities shall be deferred to 1st October, 2020. Accordingly, the entities approved/ registered/ notified under sections 10(23C), 12AA, 35 and 80G of the Income-tax Act, 1961 (the Act) would be required to file intimation within three months from 1st October, 2020, i.e., by 31st December, 2020. Further, the amended procedure for approval/ registration/ notification of new entities shall also apply from 1st October, 2020.
- The necessary legislative amendments in this regard shall be proposed in due course.
- Various representations were received in the finance ministry expressing concerns over the implementation of the new procedure from 1st June, 2020 due to the outbreak of novel corona virus (COVID-19) and consequent lockdown. There have been a number of requests to defer the applicability of the new procedure.
- It may be noted that The Finance Act, 2020 rationalized the procedure relating to approval/ registration/ notification of certain entities referred to in sections 10(23C), 12AA, 35 and 80G of the Act, with effect from 1st June, 2020. As per the new procedure, the entities already approved/ registered/ notified under these sections would be required to file intimation within three months, i.e., by 31st August, 2020. Further, the procedure for approval/ registration/ notification of new entities has also been rationalized with effect from 1st June, 2020.

(Press Release, dated 9-5-2020)

Case Laws

Volkswagen Finance Pvt Ltd. v. ITO [ITA No. 2195/Mum/2017, AY- 2015-16] (International Taxation)

Facts

- In 2014, the taxpayer (an Indian company), jointly with its related entity2 planned an event in Dubai for the launch of a premium car for the Indian market. A US based company which organises event, agreed to facilitate the appearance of a foreign celebrity for three hours at this event. During the Assessment Year 2015- 16, the taxpayer made a payment of 'appearance fee' plus other incidental costs such as travel, accommodation, etc. to the celebrity with respect to such event. However, the taxpayer did not deduct tax from the said remittance.
- As a part of such arrangement, the taxpayer and the related entity had full rights to use all the event footage, material, films, stills, interviews, etc., capturing the foreign celebrity's presence, across all platforms for 'below the line publicity'3 on the internet, in press releases, news reports and social media
- The taxpayer contended that deduction of tax was not required from appearance fee as the celebrity or his agent were not carrying out any activities in India. The appearance fees did not accrue or arise in India or deemed to accrue or arise in India.
- The Assessing Officer (AO) observed that the payment made to the celebrity was taxable as royalty in India under the Income-tax Act, 1961 (the Act) and under the India-US tax treaty (tax treaty). The Commissioner of Income-tax (Appeals) [CIT(A)] upheld the order of the AO and also held that such fees may qualify as business income accruing or arising in India..

Issue:

Recently, the Mumbai Bench of Income-tax Appellate Tribunal (the Tribunal) in the case of Volkswagen Finance Pvt Ltd.1 (the taxpayer) dealt with an issue of taxability of payment made to a foreign celebrity for an appearance made in a product launch event held at Dubai for promoting business in India. The Tribunal held that while the event, in which appearance was made by the celebrity, was held outside India, all the benefits accrued to the taxpayer in India. On account of these benefits to the taxpayer in India, the foreign celebrity was paid for his participation in the Dubai car launch event. Thus, income accrued and arised in India due to business connection in India. Accordingly, income embedded in the payment to the foreign celebrity, for participation in Dubai launch event, was taxable in India. The taxpayer was

liable to withhold taxes from the payment made to the foreign celebrity for appearance at the Dubai launch event.

Held

- In case of a non-resident, under Section 5(2) of the Act there are only two situations whereby the income can be taxed in India. First, when the income is received or is deemed to be received in India in such year by or on behalf of such person4 and second, when an income accrues or arises or is deemed to accrue or arise to him in India during such year.
- To trigger taxation under the first limb of Section 5(2)(b), the event resulting in accrual of income must take place in India which was not the situation in the present case. What results in an income accruing or arising to the foreign celebrity was participation in the car launch event, and this event has taken place outside India. The income to the celebrity cannot be said to have accrued or arisen in India. However, given the broader scheme of the Act, even such first limb needs to be read with, inter alia, Section 9(1)(i) of the Act which extends the scope of income accruing or arising in India by applying the deeming fiction6.
- The definition of 'business connection', as set out in Explanation 2 to Section 9(1)(i) introduced by the Finance Act 2003, is also an inclusive, and not exhaustive definition. The Supreme Court in the case of R D Aggarwal & Co7 observed that 'a relation, to be a business connection, must be real and intimate, and through or from which income must accrue or arise, directly or indirectly, to the non-resident'. Therefore, a business connection is not only a tangible thing (like people, businesses etc.), but also a relationship.
- The car launch event was India-centric and the entire expenditure for the launch of event were treated as expenditure of Indian entities. The event had physically taken place in Dubai but, the benefits of this event were to accrue to the taxpayer and other Indian entity (premium car company). The company had also invited 150 persons, mostly prospective buyers and some journalists, to Dubai. The cost of event was very high, and this expenditure could not have been justified for influencing car purchasing decisions of these less than 150 persons. The Tribunal observed that the MoU with celebrity's agent indicates that the predominant benefit of this event was 'below the line publicity' on internet, in press releases, news reports, social media for the launch of car in India.
- While the event, in which appearance was made by the celebrity, was held outside India, all the benefits accrued to the taxpayer in India, and it was on

account of these benefits to the taxpayer that the foreign celebrity was paid for his participation in the Dubai car launch event. The income thus accrues and arises, by the reason of business connection in India.

- The audio-visual clips were available for the use exclusively for Indian entity and the taxpayer. The use of this event, as a tool of marketing, was only in India.
- Further, all the expenses were borne by the taxpayer, and its associate and it was claimed as a deduction under Section 37(1) of the Act. It implies that the expenses have been incurred wholly and exclusively for the purposes of businesses of the taxpayer and the business of the taxpayer was only in India. There was no doubt that it was because of this relationship between the event in Dubai and business of the taxpayer in India, the income has accrued and arisen to the celebrity making appearance in Dubai launch event.
- There is an inherent dichotomy in the approach of the taxpayer. On one hand, the taxpayer claims that the expenditure in the Dubai launch event are deductible expenditure incurred for the purposes of business in India, which is the only geographical location where the taxpayer does business, and on the other hand, the taxpayer claims that the Dubai launch event does not have a business connection in India.

Taxpayer's reliance on the decision of business connection

- The taxpayer relied on various decisions to contend that, for taxation in India, the non-resident must carry out the economic activity in India or render the related services in India. These decisions were distinguished based on the following:
  - The term 'business connection' is not defined in the Act and the categories of business connection are incapable of exhaustive enumeration.
  - Business models are constantly changing, but post the internet and social media revolution, they have changed drastically, with the fundamental rules of the game changing. The internet and social media have changed the way businesses communicate and, hence, the law is to be seen in tandem with the ground realities of the business world, rather than in the strict confines of what has been decided in judicial precedents which were in the context of a different business world altogether.
  - Presently, virtual and intangible business are far more critical, important and commonplace than the conventional brick and mortar business connection. To disregard such business connection only because courts, while delivering judgments several decades ago, could not visualize the same and hedge their observations about such

possibilities, will be a travesty of justice.

- None of the earlier decisions had an occasion to examine an intangible business connection. The very concept of 'below the line publicity' is something quite fundamentally new and, undisputedly, none of the decision cited dealt with such contemporary instruments influencing customer behavior.
- Hence, the Tribunal did not rely on any of these decisions and observed that 'it would be inappropriate to use the words and expressions employed in these rulings, in isolation, as complete exposition of law and as to a blind man's walking stick'

Taxability under Section 115BBA of the Act

- The taxpayer contended that the provision of Section 115BBA provides for taxability of an entertainer, who is not a citizen of India and is a non-resident relating to his income received or receivable from his performance in India. Section 115BBA refers to the 'performance in
- India' implying thereby that performance outside India is outside the ambit of taxation in India.
- The Tribunal observed that Section 115BBA deals with the mode and rate of taxation in the hands of non- resident sportsmen, non-resident sports associations and institutions, and non-resident entertainers. These modalities of taxation cannot be treated restrictions on chargeability to tax under Section 5(2)(b) of the Act. In case any income is not eligible for the specified treatment under Section 115BBA , on account of not fulfillment of certain criteria set out therein, such income will be taxable in the normal course in the hands of the non-resident entertainer in India.
- Accordingly, the Tribunal rejected this ground.

Taxability under 'Other Income Article' of the tax treaty

- The taxpayer contended that since the income on account of participation in a product launch event outside India was not covered by any specific provisions of the tax treaty including Article 18 dealing with income of the entertainers. In such a situation, , it can only be taxed in the residence state under Article 23(1) of the tax treaty. The Tribunal rejected the contention of the taxpayer for the simple reason that Article 23(3), which is a non-obstante clause vis-à-vis Article 23(1), provides that items of income of a resident of one State not dealt with in the foregoing articles and arising in the other State may also be taxed in that other State. What essentially follows is that Article 23(3) allows the country in which the income arises, to tax such income if its law so provides. The scheme of the treaty is thus unambiguous inasmuch as the treaty protection

from source taxation is not available to an income which is not covered by the specific articles of the treaty in question.

REGULATION GOVERNING INVESTMENTS

FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2020

- Schedule II - (Investments by Foreign Portfolio Investors)
  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 the Foreign Exchange Management (Deposit) Regulations, 2016.
    2. 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.

  B. Remittance of sale proceeds
    1. The sale proceeds (net of taxes) of equity instruments and units of REITs, InViTs and domestic mutual fund may be remitted outside India or credited to the foreign currency account or a SNRR account of the FPI.
- The existing provision at para A (2) of Sl. No. VII shall be substituted by the following, namely:
  "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."
- The existing provision at Sl. No. VIII shall be substituted by the following, namely:
  Schedule VIII (Investment by a person resident outside India in an Investment Vehicle)
  A. Mode of payment
    1. 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 the Foreign Exchange Management (Deposit) Regulations, 2016.
    2. 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. Remittance of sale proceeds
   1. The sale/ maturity proceeds (net of taxes) of the units may be remitted outside India or may be credited to the NRE or FCNR(B) or SNRR account, as applicable of the person concerned.

COMPANY LAW

Company Law Updates

- In case of listed companies, inability to send notice to shareholders via registered post / speed post / courier for right issue of shares opened upto 31st July 2020 will not be considered as violation of section 62(2) of the Companies Act, 2013 provided they comply with relaxations given by SEBI vide circular no. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated 6th May 2020.

- Contribution to Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) has been added in the list of activities which may be included in the CSR policy of companies. This is effective from 28th March 2020.

ACCOUNTS & AUDIT

Accounting for Surcharge on Delayed Payment

EAC of the ICAI has opined that the 'late payment surcharge' levied by the power generation companies on the electricity board / distribution companies for delay in payment is a compensation for time value of money and is in nature of finance income. In the extant case, power generation company is not a NBFC and hence, late payment surcharge should be disclosed under other income as per requirement of Schedule III Division II and as per para 20(b) of Ind AS 107 – 'Financial Instruments: Disclosures'.

GOODS AND SERVICE TAX

Central Goods and Services Tax (Fifth Amendment) Rules, 2020.

- In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), with effect from the 21st April, 2020, in rule 26 in sub-rule (1), after the proviso, following proviso shall be inserted, namely:
  "Provided further that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 21st day of April, 2020 to the 30th day of June, 2020, also be allowed to furnish the return under section 39 in FORM GSTR-3B verified through electronic verification code (EVC).".
- In the said rules, after rule 67, with effect from a date to be notified later, the following rule shall be inserted, namely: -
  "67A. Manner of furnishing of return by short messaging service facility.- Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in FORM GSTR-3B for a tax period, any reference to electronic furnishing shall include furnishing of the said return through a short messaging service using the registered mobile number and the said return shall be verified by a registered mobile number based One Time Password facility..

  [Notification No.38/2020-GST, dated 05 May 2020]

DISCLAIMER AND STATUTORYNOTICE

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