



CBDT clarifies that tax shall not to be deducted on GST component of services

Background

On 13 January 2014, the Central Board of Direct Taxes (CBDT) issued a Circular No. 1¹ clarifying that wherever in terms of the agreement or contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Income-tax Act, 1961 (the Act) on the amount paid or payable without including such service tax component.

With effect from 1 July 2017, the Goods and Services Tax (GST) has come into effect replacing the earlier service tax which was being charged prior to this date as per the provisions of Finance Act, 1994. Since there was a need to harmonise the contents of CBDT Circular No. 1 with the new system for taxation of services under the GST regime, representations were made to CBDT seeking clarification as to what treatment would be required to be given to the component of GST on services.

CBDT Circular No. 23/2017

CBDT has issued a Circular No. 23² clarifying that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid or payable without including such 'GST on services' component. GST for these purposes shall include Integrated GST, Central GST, State GST and Union Territory GST.

CBDT has also clarified that any reference to 'service tax' in an existing agreement or contract which was entered prior to 1 July 2017 shall be treated as 'GST on services' with respect to the period from 1 July 2017 onward till the expiry of such agreement or contract.

Our comments

The issue with respect to applicability of Tax Deducted at Source (TDS) on the service tax component was dealt by the Rajasthan High Court in the case of Rajasthan Urban Infrastructure³. The High Court held that if as per the terms of the agreement between the payer and the payee, the amount of service tax is to be paid separately, no tax is required to be deducted on the service tax component under Section 194J of the Act. In view of above decision, CBDT issued Circular No. 1 and clarified that where service tax component is indicated separately in the amount payable to a resident, tax shall be deducted at source on the amount excluding the service tax component.

It is understood that GST is basically a summation of various indirect taxes and levies (including service tax) so as to obviate the multiplicity of taxes. In line with the above decision and circular and considering the representations received from various stakeholders, the CBDT has issued a circular clarifying that where GST component is indicated separately in the amount payable to a resident, tax shall be deducted at source on the amount excluding the GST component. This circular provides much needed clarity on this aspect.

¹ Circular No. 1/2014, dated 13 January 2014

² Circular No. 23/2017, dated 19 July 2017

³ CIT (TDS) v. Rajasthan Urban Infrastructure [2013] 261 CTR 628 (Raj)

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