



Government issues guidelines for waiver of interest charged for default in deduction and payment of tax under the Income-tax Act

Background

As per Section 201(1A) of the Income-tax Act, 1961 (the Act) if any person, including principal officer or company, does not deduct, the whole or any part of the tax, or after deducting fails to pay the tax as required by or under the Act, then, such person shall be liable to pay interest. Interest will be charged, from the date on which tax was deductible to the date on which such tax is deducted.

Interest is mandatory and is payable even in cases where default has resulted under genuine circumstances existing at the time of deducting such tax. No appeal shall lie against the levy of such interest. This causes genuine hardship to the deductor.

As per the provisions of Section 119(2) of the Act, the Central Board of Direct Taxes (CBDT) in the interest of public may issue directions to Chief Commissioner of Income-tax (CCIT) and Director General of Income-tax (DGIT) to reduce or waive interest.

In view of the powers conferred on it, the government has now issued the Circular¹ prescribing guidelines for waiver of interest charged for default in deducting and payment of tax under the Act. The CBDT has directed that CCIT and DGIT may reduce or waive such interest in the certain specified classes of cases.

CBDT Circular

The government directed that the CCIT and DGIT may reduce or waive interest for default in deducting tax at source in the specified classes of cases for the period and to the extent the CCIT/DGIT may deem fit. However, no reduction or waiver of such interest shall be ordered unless the specified demand under various income-tax provisions² are fully paid, or satisfactory arrangements for payment of principal demand under these provisions have been made. The CCIT/DGIT may impose any other conditions as deemed fit for the said reduction or waiver of interest.

The class of cases in which the reduction or waiver of interest can be considered are as follows:

- Where during the search and seizure proceedings under the Act, or otherwise, the books of account and other documents necessary for making deduction under Chapter XVIIIB³ of the Act were seized and the taxpayer was not able to, within the time specified, deduct tax at source from any sum credited to any account (whether called 'suspense account' or by any other name) in his/her books of accounts.
- Where any sum paid or payable was not liable for deduction of tax at source in the case of a deductor on the basis of any order passed by the jurisdictional High Court, and as a result, he/she did not deduct tax at source in relation to such sum, and subsequently, in consequence of any retrospective amendment of law or a decision of the Supreme Court of India or a decision of a larger bench of the jurisdictional High Court (which

¹ Circular No. 11/2017, dated 24 March 2017

² Section 200A, 201(1) or 234E of the Act

³ Collection and recovery - deduction at source

was not challenged before the Supreme Court and has become final) in any proceedings, as the case may be, tax was held to be deductible or the tax deducted by the deductor during such financial year was found to be less than the tax deductible on such sums paid or payable.

- Where the default under Section 201 of the Act relates to non-deduction or a lower deduction of tax⁴ in respect of a payment made to a non-resident (including a foreign company) being a resident of a country or specified territory outside India with whom India has entered into a tax treaty, and where.
 - A dispute regarding the tax payable in India in respect of the said payment had been referred to the Competent Authority in India⁵.
 - Such reference had been received by the Competent Authority in India within a period of two years of the date on which the notice of demand determining the tax payable was received by the person in default⁶.
 - The dispute has been settled by way of a resolution arrived at under the Mutual Agreement Procedure (MAP) provided in the tax treaty; and
 - The person in tax default has given his acceptance to the resolution and has withdrawn his appeal(s) pending on the issue⁷, within a period of one month of the date on which the resolution is communicated to him.
- Even if the interest has already been paid by the deductor, the same can be considered for waiver, subject to the specified conditions and a refund may be given to the deductor, if waiver is ordered.
- The CCIT or DGIT examining an application for waiver of interest shall pass a speaking order after providing adequate opportunity of being heard to the applicant.
- The CBDT reserves the power to examine any grievance arising out of an order passed or not passed by CCIT or DGIT, as the case may be, and issue suitable directions to these authorities for proper implementation of this order. However, no review of or appeal against the orders passed on merits by such authorities would be entertained by the CBDT.

Our comments

Issuance of guidelines for waiver of interest is a welcome move. However, the guidelines for waiver of interest are applicable to certain specified classes of cases and subject to fulfillment of specified conditions.

The circular provides relief to the taxpayers facing similar difficulties. The current circular is in line with the government's initiative of non-adversarial tax regime and ease of doing business in India.



⁴ Under Section 195 of the Act

⁵ Provided in Rule 44H of the Income-tax Rules, 1962 (the Rules)

⁶ Under Section 201 of the Act

⁷ Within the meaning of Rule 44H(4) of the Rules

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