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Contents

Direct Tax

CBDT issues clarifications to extend various time limits under Direct Tax

The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 had provided relaxation in certain provisions and extension of various due dates which were falling during the period from 20 March to 29 June 2020. Recently, CBDT has issued a Notification[1] and a press release to further extend various due dates. The Notification has extended the period within which due dates are falling and the due dates of various compliances. Originally, an extension was provided for due dates falling between 20 March and 29 June 2020. This is now extended to 31 December 2020. Similarly, the time limit for completion or compliance of various actions falling under 20 March to 31 December 2020 is extended to 31 March 2021 subject to certain exceptions. Various extended time limits are as follows:

- Completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action by any authority, commission or Tribunal, by whatever name called – **31 March 2021**
- Filing of any appeal, reply or application or furnishing of any report, document, return, statement, or such other record, by whatever name called - **31 March 2021**
- Making of investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever name called, to claim any deduction, exemption or allowance under the following provisions:
  - Section 54 to 54GB - **30 September 2020**
- Beginning of manufacture or production of articles or things or providing any services referred to in Section 10AA, in a case where letter of approval, under the SEZ Act has been issued on or before the 31 March 2020 - **30 September 2020**
- The time limit for furnishing income-tax return under Section 139 for the AY 2019-20 was extended till 31 July 2020. CBDT[2] has further extended the time limit from 31 July 2020 to **30 September 2020**
- The time limit for furnishing income-tax return under Section 139 for the AY 2020-21 - **30 November 2020**
- Furnishing of certificate under Section 203 in respect of deduction or payment of tax under Section 192 for the financial year 2019-20 - **15 August 2020**
- Furnishing of report of audit for the AY 2020-21 - **31 October 2020**
- Time limit for completion or compliance of the action under Vivad se Vishwas Scheme - **31 December 2020.**

[1] Notification 35 of 2020, dated 24 June 2020

[2] Notification No. 56/2020, dated 29 July 2020

Decisions

The AAR rejects application because the arrangement was designed prima facie to avoid tax and to avail the benefit under the India-Mauritius tax treaty

The AAR[3] rejected the application of the taxpayer and held that the entire arrangement of sale of shares of Singapore company deriving its value substantially from the assets located in India was designed *prima facie* to avoid tax in India. It went on to hold that the real intention behind the structure of transaction was to avail the benefit of the India-Mauritius tax treaty. In arriving at these conclusions, it relied on the following factors:

- Notes to financial statement stated the objective of the applicant was to act as an investment holding company for investment outside Mauritius. Further no other investment (other than in the Flipkart Singapore) was made.
- Real management and control (head and brain) of the applicant was not with their respective board of directors, but with a US founder and this observation was based on:
    - Bank account signatory of the entity being based in the US
    - Beneficial Ownership description in filings made with the Financial Services Commission, Mauritius

The seconded employee does not constitute a service PE in India under the India-Singapore tax treaty

The Delhi Tribunal[4] held that a Singapore company does not constitute a Service PE in India under the India-Singapore tax treaty on deputation of its employee to an Indian company. The deputed employee was under the direct control and supervision of the Indian company and the Singapore company had discharged the employee from all obligations and rights whatsoever, including lien on employment. The deputed employee was permanently moved to the payroll of the Indian company. Therefore, the Singapore company does not constitute a Service PE in India.

The Tribunal also held that the Singapore company does not constitute an agency PE on account of marketing activities carried out by the Indian company in India. Further the payment made to the deputed employee was not taxable as FTS.

Expenditure incurred for improvement of the lease premises is revenue in nature. Further ATMs are computers eligible for higher rate of depreciation

The Karnataka High Court[5] held that expenditure incurred for improvement of the premises taken on lease does not bring into existence any new capital asset. The expenditure were incurred for conducting the business of the taxpayer more profitably and more successfully. Therefore, such expenditure was revenue in nature.

Further, the High Court held that ATMs should be treated as computers, eligible for 60 per cent depreciation. The computer is an integral part of ATM machine and on the basis of information processed by the computer in ATM machine, the mechanical function of the dispensation of cash or deposit of cash is done.

[3] Tiger Global International II Holdings (AAR/04/2019, 26 March 2020)
[4] DDIT v. Yum Restaurants (Asia) Pte. Ltd (ITA No.6018/Del/2012)
[5] ACIT v. NCR Corporation Pvt. Ltd. [ITA No. 242 of 2011, AY- 2003-04]

Non-compete fees paid to key employees in US is treated as salary or profit in lieu of salary and it is taxable only in US under the India-US tax treaty

The Karnataka High Court[6], held that the non-compete fee paid to key employees in US is salary or profit in lieu of salary. Since the employees rendered services outside India i.e. in US and payments were also made in US, Article 16 of the tax treaty applies and therefore such fee was taxable only in US. Therefore, the employer was not under any obligation to deduct tax at source. Further, it was held that where the payments are in nature of salary, the payer need not approach the tax officer under Section 195(2).

Benefit of Section 10A is allowed on the enhanced income pursuant to the MAP resolution

The Tribunal (Bangalore Bench)[7] held that the transfer pricing provisions[8] which deny the allowability of Section 10A benefit on the enhanced income will apply only to adjustment made by the AO and not to any other modes of determination of Arm's Length Price for e.g. MAP in the present case. Accordingly, the Tribunal held that the taxpayer was eligible for the benefit of Section 10A with respect to enhanced income under the MAP resolution.

Notification/Circular/ Press Release

- CBDT has issued Notifications[9] prescribing certain classes of persons for non-applicability of Section 56(2)(x)[10] and Section 50CA[11]. CBDT amended Rule 11UAC [relating to Section 56(2)(x)] and introduced a new Rule 11UAD [relating to Section 50CA]. As per the amended/new Rule, these anti-abuse provisions will not apply to unquoted shares, of a company and its subsidiary and the subsidiary of such subsidiary received by a shareholder/transferred by a taxpayer subject to certain conditions. Further it is provided that Section 56(2)(x) will not apply to any equity shares, of a reconstructed bank, received by an investor or an investor bank, where such shares have been allotted by the reconstructed bank under the scheme at a price specified in the scheme.

- The Finance Act, 2020 provided a new optional tax regime for individuals and HUF with modified tax slabs and specified rates. On satisfaction of prescribed conditions, such individuals or HUF may opt to compute tax in respect of total income, without considering prescribed exemptions/ deductions, in place of the existing tax regime. The new tax regime prescribes a list of exemptions/ deductions which cannot be claimed under such regime.

  CBDT has issued a Notification[12] to amend certain Income-tax Rules and to provide the following set of exemptions/ deductions which can be claimed even under the new tax regime (Section 115BAC):

  - Exemption for allowance to meet cost of travel on tour or transfer
  - Exemption for allowance on daily expenses on transfer, tour allowance for travel, for official

[6] DIT & ITO v. Sasken Communications Technologies Ltd. [ITA No. 241 of 2011, AY 2006-07]
[7] Dell International Services India Pvt Ltd. v. DCIT (IT(TP)A No. 879/Bang/2018, AY 2007-08)
8 First proviso to Section 92C(4)
[9] Notification No. 40 of 2020, dated 29 June 2020
[10] Receipt of the sum of money or the property received by a person without any consideration or for a less consideration is liable to tax in the hands of the receiver under the head 'Income from other sources'
[11] In case of transfer of shares of a company other than quoted shares, the fair market value (FMV) of such shares determined in the prescribed manner shall be deemed to be the full value of consideration (if consideration is less than the FMV) for the purpose of computing income chargeable to tax as capital gains.
[12] Notification 38 of 2020, dated 26 June 2020

purposes to meet the travel and daily expenses

- Exemption on conveyance allowance for meeting conveyance expenditure incurred in the course of performing official duties provided that free conveyance is not provided by the employer.
- Further, blind, deaf and dumb or orthopedically handicap employees can also claim an ad-hoc exemption of transport allowance of INR 3200 per month.

Separately, exemption for free food and non-alcoholic beverages provided by the employer even during working hours at office or business premises has been withdrawn for employees who have opted for new tax regime.

BEPS/MLI

- The OECD issued a statement in response to recent statements and exchanges regarding the ongoing negotiations to address the tax challenges of the digitalisation of the economy. It states that all members of the Inclusive Framework should remain engaged in the negotiation towards the goal of reaching a global solution by the year end, drawing on all the technical work that has been done during the last three years, including throughout the COVID-19 crisis. 137 countries are involved in the negotiations on an equal footing to develop a two-pillar approach, which will be discussed in the next meeting of the Inclusive Framework in October 2020.

Indirect Tax

Advance Authority Rulings (AAR)

The pattern of renting provides the 'context' or 'perspective' in determining the meaning of the term 'per unit'

The AAR observed[13] that for the purpose of determining the GST rate applicable on hotel accommodation services, the pattern of renting provides the 'context' or 'perspective' in determination of units of accommodation. In a hotel, a room constitutes 'a unit' whereas in a hostel, a bed may constitute 'a unit', as tariff is also declared accordingly.

Given that the GST Act has not defined the meaning of the term per unit, in the instant case the applicant had filed an application seeking the ruling on whether entire villa as a unit or rooms available in the respective unit shall be considered as one unit. The AAR held that, the villa is rented as a whole to only a single client and there is no option of booking a particular room of the villa it is an 'indivisible unit'. Hence, the expression 'per unit' will be the entire villa.

ITC on lifts procured and installed in a hotel building not available

The AAR observed and held[14] that a lift comprises of components or parts such as lift car, motors, ropes, rails, etc. and each of them has its own identity prior to installation and they are assembled/installed to create the working mechanism called lift. The parts of the lift are assembled at the site in accordance with its design and requirement of the

[13] Isprava Hospitality Private Limited [GST-ARA-52/2019-20/B-39 dated 17 March 2020]

[14] Jabalpur Hotels Private Limited [TS-532-AAR-2020-NT]

building which may include the floor levels and the lift has to open on different floors or otherwise depending upon the requirement depending upon the requirement. The lift therefore becomes part of the building and is not a separate thing per se. Lift does not have an identity when removed from the building, it is a customised mechanism for transportation, designed to suit specific building. Upon piece by piece installation, it becomes an integral part of the building. Thus, ITC of tax paid on lifts procured and installed in hotel building shall not be available as the same being immoveable property is blocked in terms of section 17(5)(d) of the CGST Act, 2017.

Sale of plot of land along with primary amenities such as drainage line, water line, electricity line, etc. is subject to levy of GST

The AAR observed[15] that, in the activity of plot development, after necessary approval is obtained from the Development Authority, the applicant is required to carry out activity such as levelling the land, construct boundary wall and roads, laying of underground cables and water pipelines, laying of underground sewerage lines with sewer treatments plant, development of landscaped gardens, drainage system, water harvesting system, demarcation of individual plots, construction of overhead tanks, other infrastructure works. Further common amenities like garden, community hall, etc. are also offered in some schemes. Sale of such sites is done to end customers who may construct houses/villas in the plots.

The applicant charges the rates on super built-up basis and not the actual measure of the plot. In effect the applicant is collecting charges towards the land as well as the common amenities, roads, water tank and other infrastructure on a proportionate basis, thus the cost of such amenities form part of the intrinsic value of plot allotted to the customers.

Thus, the AAR held that activity of sale of developed plot would be covered under the clause 'construction of complex intended for sale to the buyer' and accordingly liable to GST.

Appellate Authority for Advance Ruling (AAAR)

Subscription/Membership Fees collected from members of the club not subject to levy of GST

Setting aside the order passed by the AAR, the AAAR held[16] that in the instant case, the club is not providing any specific facility or benefits to its members against the membership subscription charged by it. The entire subscription is spent towards meetings and administrative expenditures only and thus it is not carrying out any business activity as envisaged under the GST Act. Once it is established that the activity of the club is not covered by the definition of business, it can be deduced that activities of the club would not come under the definition of scope of supply for the purpose of levying GST.

The activity of collecting membership fees which is purely in the nature of a reimbursement for the meetings and administrative expenditures incurred to sustain and propagate their inherent program, if subjected to GST would amount to double taxation. Since the amount spent towards the meetings and administration expenditures is already subjected to GST at the hand of the suppliers of these input services or goods.

[15] Shree Dipesh Anilkumar Nail [TS-401-AAR-2020-NT]

[16] Rotary Club of Mumbai Queens Necklace [TS-1299-AAAR-2019-NT]

Case laws under Service tax

Foreclosure charges collected by Banks and NBFC on premature termination of loans not liable to service tax

The CESTAT held[17] that foreclosure charges are recovered as compensation for disruption of a service and not towards lending services. The amount for processing charges and documentation charges or like charges are subjected to service tax because they are essential for the activity of lending. Foreclosure is an anti-thesis to lending and therefore cannot be construed to be in relation to lending. Merely, because the clause relating to damage is featuring in a contract, it would be incorrect to conclude that the party has been given an option to violate the contract. Hence, to treat eventuality of foreclosure as an optional performance is incorrect. The contract cannot be understood to be providing an option to the parties to either perform or not perform/violate. Thus, foreclosure charges collected by banks/NBFC are not liable to service tax.

[17] Repco Home Finance Limited [TS-506-CESTAT-2020(CHNY)-ST]

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