Connection

Volume V, Issue 4 July 2016 LLB & Co.

Everyone can rise above their circumstances and achieve success if they are dedicated to and passionate about what they do.

~ Nelson Mandela

LLB & CO.

Volume V, Issue 4 July 2016

Communiqué

Dear Seniors, Friends & Colleagues

As I write this foreword, I can see the rain drop on soil emanating the most awaited fragrance. Monsoon is a sign that we will get relief from this scorching heat and good monsoon also helps in prosperity of our country as our agriculture is more or less dependent on monsoon. Monsoon also fosters energy and enthusiasm around environment right from plants to people and whole of surrounding suddenly becomes happy.

As we are close to end of July, we all fraternity members must be busy in finalization of financials of our clients. It's time to put all our efforts in the form of reports and presenting in better manner to all stakeholders. It's time we have to gather with all team members deliberate and come out with the best results. In today's dynamic world it's very important to present the things in the best possible manner and things revolve around presentation recent example is our Prime Minister Modi's speech to US congress which has impressed the whole world. So it's time we see all relevant regulatory updates and latest developments and incorporate in our workings. The speech in U.S. has highlighted the importance of presentation and increased India standing in the world.

The jolt from the Brexit verdict to global financial markets has been near catastrophic, with stocks and currencies bleeding and bonds going into a tailspin. But fortnight after Britain voted to exit the European Union (EU), U.K. Business Secretary Sajid Javid on Friday held talks with Commerce & Industry Minister Nirmala Sitharaman on the possibility of inking a separate UK-India Free Trade Agreement (FTA).

Central bank has maintained status quo in line with the market expectations. Retail inflation is slightly lower in May; Food inflation is expected to moderate after good monsoon; on the other hand IIP disappointed at -0.8% in April 2016.

Best Wishes,

CA Lalit Bajaj

Just to Remind You:

- July 21 - Payment of MVAT
- July 31 - TDS Return for June Quarter
- July 31 - Filing of IT Return by Individuals, HUF, AOPs, BOIs, Trust and Political Party (Without Audit)
- July 31 - Payment & Monthly Return of Maharashtra PT

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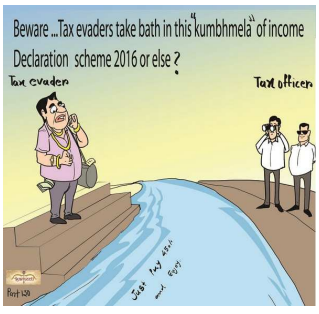
Clarifications on the Income Declaration Scheme, 2016

"The scheme is available to every person, whether resident or non-resident"



The Income Declaration Scheme, 2016 (hereinafter referred to as 'the Scheme') incorporated as Chapter IX of the Finance Act, 2016 provides an opportunity to persons who have not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totaling in all 45% of such undisclosed income declared. The Income Declaration Scheme Rules, 2016 (hereinafter referred to as 'the Rules') have been notified. In this regard, **Circular No. 17 of 2016 dated 20th May, 2016**issued by the Board provided clarifications to 14 queries. Subsequently, further queries have been received from the public about various provisions of the Scheme. The Board has considered the same and the following clarifications are issued.-

Question No.1: If only part payment of the tax, surcharge and penalty payable on undisclosed income declared under the Scheme is made before 30.11.2016, then whether the entire declaration fails as per section 187(3) of the Finance Act, 2016 or pro-rata declaration on which tax, surcharge and penalty has been paid remains valid?

Answer: In case of part payment, the entire declaration made under the Scheme shall be invalid. The declaration under the Scheme shall be valid only when the complete payment of tax, surcharge and penalty is made on or before 30.11.2016.

Question No.2: In case of amalgamation or in case of conversion of a company into LLP, if the amalgamated entity or LLP, as the case may be, wants to declare for the year prior to amalgamation/ conversion, then whether a declaration is to be filed in the name of amalgamated entity/ LLP or in the name of the amalgamating company or company existing prior to conversion into LLP?

Answer: Since the amalgamating company or the company prior to conversion into LLP is no more into existence and the assets/liabilities of such erstwhile entities have been taken over by the amalgamated company/LLP, the declaration is to be made in the name of the amalgamated company or the LLP, as the case may be, for the year in which the amalgamation/ conversion takes place.

Question No.3: Whether the Scheme is open only to residents or to non-residents also?

Answer: The Scheme is available to every person, whether resident or nonresident.

Question No.4: If undisclosed income relating to an assessment year prior to A.Y. 2016-17, say A.Y. 2001-02 is detected after the closure of the Scheme, then what shall be the treatment of undisclosed income so detected?

Answer: As per the provisions of section 197(c) of the Finance Act, 2016, such income of A.Y. 2001-02 shall be assessed in the year in which the notice under section 148 or 153A or 153C, as the case may be, of the Income-tax Act is issued by the Assessing Officer. Further, if such undisclosed income is detected in the form of investment in any asset then value of such asset shall be as if the asset has been acquired or made in the year in which the notice under section 148/153A/153C is issued and the value shall be determined in accordance with rule 3 of the Rules.

Question No.5: Whether a person on whom a search has been conducted in April, 2016 but notice under section 153A is not served upto 31.05.2016, is eligible to declare undisclosed income under the Scheme?

Answer: No, in such a case time for issuance of notice under section 153A has not expired. Hence the person is not eligible to avail the Scheme in respect of assessment years for which notice under section 153A can be issued.

Question No.6:As per Circular No.17 of 2016, question No.14, it is not mandatory to attach the valuation report. But Form-1 states "attach valuation report". How to interpret?

Answer: It is necessary for the declarant to obtain the valuation report but it is not mandatory for him to attach the same with the declaration made in Form-1. However, the jurisdictional Pr. Commissioner/ Commissioner in order to ascertain the correctness of the value of the asset quoted in Form-1 may require the declarant to file the valuation report before issuing the acknowledgment in Form-2. In such a circumstance, it will be necessary for the declarant to make the report available to the Pr. Commissioner/ Commissioner.

Question No.7: Is it mandatory to furnish PAN in the Form of declaration?

Answer: Yes, PAN is the unique identifier for all direct tax purposes. This is also necessary in order to claim the benefits and immunities available under the Scheme.

Question No.8: If any proceed-

ing is pending before the Settlement Commission, can a person be considered eligible for the Scheme?

Answer: No, a person shall not be eligible for the Scheme in respect of assessment years for which proceeding is pending with Settlement Commission.

Question No.9: Land is acquired by the assessee in year 2001 from assessed income and is regularly disclosed in return of income. Subsequently in the year 2014, a building is constructed on the said land and the construction cost is not disclosed by the assessee. What shall be the fair market value of such building for the purposes of the Scheme?

Answer: Fair market value of land and building in such a case shall be computed in accordance with Rule 3(2) by allowing proportionate deduction in respect of asset acquired from assessed income.

Question No.10: Whether cases where summons under section 131(1A) have been issued by the Department or letter under the Non-filer Monitoring System (NMS) or under section 133(6) are issued are eligible for the Scheme?

Answer: Cases where summons under section 131(1A) have been issued by the department or letters for enquiry under NMS or under section 133(6) are issued but no notice under section 142 or 143 (2) or 148 or 153A or 153C [as specified in section 196 (e)] of the Finance Act, 2016 has been issued are eligible for the Scheme.

Question No.11: If notices under section 142, 143(2) or 148 have been issued after 31.05.2016 and assessee makes declaration under the Scheme then what shall be the fate of these notices?

Answer: As clarified vide Explanatory Circular No. 17 dated 20.5.2016 , a person shall not be eligible for the Scheme in respect of the assessment year for which a notice under section 142, 143 (2) or 148 has been received by him on or before 31.5.2016. In a case where notice has been received after the said date, the assessee shall be eligible to make a declaration under the Scheme for the said assessment year. Such declaration shall be valid if it has not been made by suppression of facts or misrepresentation and the amount payable under the Scheme has been duly paid within the specified time. On furnishing by the declarant the certificate issued by the Pr. Commissioner/Commissioner in Form-4 to the Assessing Officer, the proceedings initiated vide notice under section 142, 143(2) or 148 shall be deemed to have been closed.

Question No.1: Will the information contained in the declaration be shared with other law enforcement agencies?

Answer: No; the information contained in the declaration shall not be shared with any other law enforcement agency. The information will also not be shared within the Income Tax Department for any investigation in respect of a valid declaration.

Question No.2: Whether immunity will be provided under other economic laws including Service Tax, VAT, Companies Act, SEBI Act & regulations etc.?

Answer: The Scheme provides immunity under the Income-tax Act, 1961, the Wealth-tax Act, 1957 and the Benami Transactions (Prohibition) Act, 1988. Immunity from Benami Transactions (Prohibition) Act is subject to the condition that the property will be transferred to the declarant (being the person who provided the consideration for the property) latest by 30th September, 2017. However, as mentioned in response to Question No.1 above, the information contained in the declaration made under the Scheme will not be shared with any other tax or law enforcement agency.

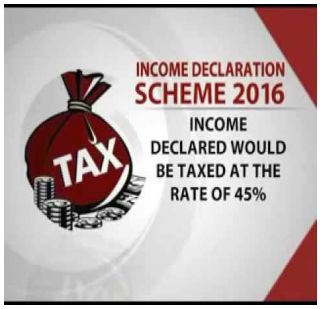
Question No.3: Where the value of immovable property determined under Rule 3 of the IDS Rules is lower than the value adopted or assessed/assessable by stamp valuation authority referred in section 50C or section 43CA of the Income-tax Act, whether value of such property is to be declared as per Rule 3 of the IDS Rules, or as per section 50C/43CA?

Answer: The value of the property for the purposes of declaration in such cases shall be computed as per Rule 3 of the IDS Rules even if such value is lower that the value adopted or assessed/assessable by stamp valuation authority.

Question No.4: Whether credit for tax deducted, if any, in respect of income declared shall be allowed?

Answer: Yes; credit for tax deducted shall be allowed only in those cases where the related income is declared under the Scheme and the credit for the tax has not already been claimed in the return of income file for any assessment year.

Question No.5: Where a valid declaration is made after making valuation as per the provisions of the Scheme read with IDS Rules and tax, surcharge & penalty as specified in the Scheme have been paid, whether the department



will make any enquiry in respect of sources of income, payment of tax, surcharge and penalty?

Answer: No.

Question No.6: What is the purpose of obtaining the information about the nature of undisclosed income in the last column of table at point (l) relating to nature of undisclosed income in Annexure to Form-1?

Answer: The purpose of obtaining information about the nature of undisclosed income is to know whether the undisclosed income is in the form of moveable asset, immovable asset, gold, jewellery or cash. Here, the nature of income need not be confused with the source of income. There is no need to indicate the source of income at all. In the column meant for nature of undisclosed income one has to write the nomenclature such as 'immovable property', 'moveable property', 'gold', 'jewellery' or 'cash' etc. This will enable the taxpayer to establish the link between the income declared under the scheme and the claim, if any, made in respect of such undisclosed income in the return of income filed subsequently or during any assessment proceedings.

Question No.7: In case the value of immovable property is evidenced by registered deed, whether the value as per registered deed or the market value as on 01.06.2016 is to be declared?

Answer: As per Rule 3 of the IDS Rules, the fair market value of an immovable property shall be the higher of its cost of acquisition and the price that the property shall ordinarily fetch if it is sold in the open market as on 1st June, 2016. The value mentioned in the registered deed shall be relevant for determining the cost of acquisition and the same can be taken as the fair market value only where it is higher than the price that the property shall ordinarily fetch if sold in the open market as on 1st June, 2016.

Question No.8: In case a declaration relating to investment in undisclosed asset is made under the Scheme, whether any investigation will be initiated against the seller in respect of such declaration?

Answer: No.

Question No.9: What are the advantages of the Scheme as against declaring the past undisclosed income as current income in the return of income to be filed for Assessment Year 201 7-18? How will the Department identify the year in which the undisclosed income was earned.

Answer: In this regard, the following points may be noted:

Declaration of past undisclosed income in the current year amounts to false verification of return of income which shall attract prosecution under the Income-tax Act.

If anyone attempts to disclose past undisclosed income in the current year, he will have to explain the source of income and substantiate the manner of earning the said income. In case of disclosure under the Scheme, there is no need to explain the source of income.

Declaration of past undisclosed income in the current year cannot explain assets acquired in the past or provide any immunity in respect of the same.

The Income-tax Department is in receipt of large volume of information from various sources such as registrars of property, banks, financial institutions, stock exchanges, tax deductors etc. The Department has launched a comprehensive data-mining and compliance management programme in the form of 'Project Insight' which will generate a large volume of reliable information about financial transactions undertaken by taxpayers and the relevant year in which the transaction was undertaken.

Question No.10: In a case the declarant earned undisclosed income of Rs. 90 lakh in previous year 2010-11. Out of the same, he acquired an immovable property in the previous year 2011-1 2 for Rs.50 lakh, made personal expenditure to the extent of Rs.20 lakh and balance Rs.20 lakh is left with him as cash in hand on 01.06.2016. The fair market value of the immovable property as on 01.06.2016 is Rs.80 lakh. What is the amount to be declared under the Scheme?

Answer: The declarant in this case has to declare the following:

(i) 80 lakh being fair market value of the immovable property as on 01.06.2016

(ii) 20 lakh being the cash in hand as on 01.06.2016

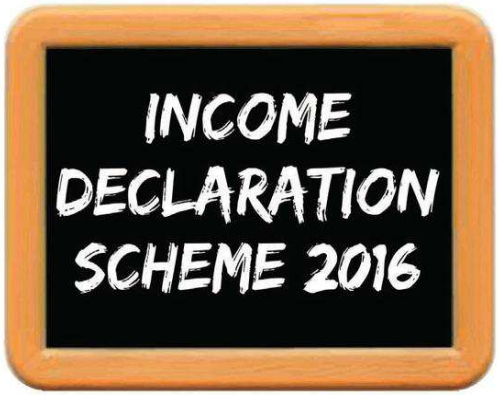
(iii) Rs. 20 lakh being the balance of undisclosed income [Rs. 90 lakh – (Rs.50 lakh + Rs. 20 lakh)] which is not represented in the form of investment in any asset.

Thus the total undisclosed income to be declared in this case will be Rs. 1.20 crore.

Question No.11: A person invested his undisclosed income in a house property in the previous year 2010-1 1 which has not been let out. The person also owned another house property from disclosed sources, which has been claimed as self-occupied property for the purposes of computation of income

under the head income from house property. In case the person declares the undisclosed house property at its fair market value on 01.06.2016, whether any action will be taken for bringing the annual value of the undisclosed property to tax as income from house property by deeming it to be let property as provided under section 23(4)(b) of the Income-tax Act for the earlier previous years?

Answer: No. However, where the house property was let-out during the relevant period, the actual rent received or receivable will be required to be declared under the Scheme in addition to the fair market value of the house property as on 01 .06.2016.



CBDT notifies rules for Foreign Tax Credit

In exercise of the powers conferred by clause(ha) of sub-section (2) of section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the **Income-tax (18th Amendment) Rules, 2016.**

(2) They shall come into force on the 1st day of April, 2017.

2. In the Income-tax Rules, 1962 (hereinafter referred to as the said rules), after rule 127, following rule shall be inserted, namely:-

"**128. Foreign Tax Credit.**– (1) An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in this rule:

Provided that in a case where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India.

(2) The foreign tax referred to in sub-rule (1) shall mean,-

(a) in respect of a country or specified territory outside India with which India has entered into an agreement for the relief or avoidance of double taxation of income in terms of section 90 or section 90A, the tax covered under the said agreement;

(b) in respect of any other country or specified territory outside India, the tax payable under the law in force in that country or specified territory in the nature of income-tax referred to in clause (iv) of the Explanation to section 91.

(3) The credit under sub-rule (1) shall be available against the amount of tax, surcharge and cess payable under the Act but not in respect of any sum payable by way of interest, fee or penalty.

(4) No credit under sub-rule (1) shall be available in respect of any amount of foreign tax or part thereof which is disputed in any manner by the assessee:

Provided that the credit of such disputed tax shall be allowed for the year in which such income is offered to tax or assessed to tax in India if the assessee within six months from the end of the month in which the dispute is finally settled, furnishes evidence of settlement of dispute and an evidence to the effect that the liability for payment of such foreign tax has been discharged by him and furnishes an undertaking that no refund in respect of such amount has directly or indirectly been claimed or shall be claimed.

(5) The credit of foreign tax shall be the aggregate of the amounts of credit computed separately for each source of income arising from a particular country or specified territory outside India and shall be given effect to in the following manner:-

(i) the credit shall be the lower of the tax payable under the Act on such income and the foreign tax paid on such income:

Provided that where the foreign tax paid exceeds the amount of tax payable in accordance with the provisions of the agreement for relief or avoidance of double taxation,

"These rules shall come into force on 1st day of April 2017"

such excess shall be ignored for the purposes of this clause;

(ii) the credit shall be determined by conversion of the currency of payment of foreign tax at the telegraphic transfer buying rate on the last day of the month immediately preceding the month in which such tax has been paid or deducted.

(6) In a case where any tax is payable under the provisions of section 115JB or section 115JC, the credit of foreign tax shall be allowed against such tax in the same manner as is allowable against any tax payable under the provisions of the Act other than the provisions of the said sections (hereafter referred to as the "normal provisions").

(7) Where the amount of foreign tax credit available against the tax payable under the provisions of section 115JB or section 115JC exceeds the amount of tax credit available against the normal provisions, then while computing the amount of credit under section 115JAA or section 115JD in respect of the taxes paid under section 115JB or section 115JC, as the case may be, such excess shall be ignored.

(8) Credit of any foreign tax shall be allowed on furnishing the following documents by the assessee, namely:-

(i) a statement of income from the country or specified territory outside India offered for tax for the previous year and of foreign tax deducted or paid on such income in Form No.67 and verified in the manner specified therein;

(ii) certificate or statement specifying the nature of income and the amount of tax deducted therefrom or paid by the assessee,-

(a) from the tax authority of the country or specified territory outside India; or

(b) from the person responsible for deduction of such tax; or

(c) signed by the assessee:

Provided that the statement furnished by the assessee in clause (c) shall be valid if it is accompanied by,-

(A) an acknowledgment of online payment or bank counter foil or challan for payment of tax where the payment has been made by the assessee;

(B) proof of deduction where the tax has been deducted.

(9) The statement in Form No.67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) shall be furnished on or before the due date specified for furnishing the return of income under sub-section (1) of section 139, in the manner specified for furnishing such return of income.

(10) Form No. 67 shall also be furnished in a case where the carry backward of loss of the current year results in refund of foreign tax for which credit has been claimed in any earlier previous year or years.".

Explanation.- For the purposes of this rule 'telegraphic transfer buying rate' shall have the same meaning as assigned to it in Explanation to rule 26.

7 things to know about TCS on sale of a motor vehicle

Section 206C of the Income-tax Act, 1961 (hereafter referred to as 'Act'), prior to amendment by Finance Act, 2016, provided that the seller shall collect tax at source at specified rate from the buyer at the time of sale of specified items such as alcoholic liquor for human consumption, tender leaves, mineral being coal or lignite or iron ore etc. It also provided for collection of tax at source at the rate of one per cent on sale in cash of bullion exceeding 2 lakh rupees and jewellery exceeding 5 lakh rupees.

In order to reduce the cash transactions in sale of goods and services. Finance Act 2016 has expanded the scope of section 206C (1 D) to provide that the seller shall collect tax at the rate of one per cent from the purchaser on sale in cash of any goods (other than bullion and jewellery) or providing of any services (other than payment on which tax is deducted at source under Chapter XVII-B) exceeding two lakh rupees. So far as sale of Jewellery and bullion is concerned, the provisions of sub-section (1D) of section 206C prior to its amendment by the Finance Act 2016 shall continue to apply. Further, with a view to bring high value transactions within the tax net, it has been provided in sub- section (1 F) of section 206C of the Act that

the seller who receives consideration for sale of a motor vehicle exceeding ten lakh rupees, shall collect one per cent of the sale consideration as tax from the buyer. Any person who obtains in any sale. the goods of the nature specified in sub-section (I D) or (IF) of section 206C is a buyer. The seller for the purposes of collection of tax under section 206C shall be —

(i) A Central Government or a state Government,

(ii) Any local authority, or corporation or authority established under any Central, State or Provincial Act,

(iii) Any company, firm or cooperative society,

(iv) An individual or Hindu undivided family who is liable to audit as per provisions of section 44AB during the financial year immediately preceding the financial year in which the goods are sold or the services are provided.

The amendments brought in section 206C by Finance Act. 2016 are applicable form 1st June 2016.

In this regard a number of queries have been received about the scope of the provisions and the procedure to be followed. The board has considered the same and decided to clarify the points raised by issue of a circular in the form of questions and answers as follows:

Question 1: Whether tax collection at source ('TCS') at the rate of 1% is on sale of Motor Vehicle at retail level or also on sale of motor vehicles by manufacturers to dealers/distributors.

Answer: To bring high value transactions within the tax net, section 206C of the Act has been amended to provide that the seller shall collect the tax at the rate of one per cent from the purchaser on sale of motor vehicle of the value exceeding ten lakh rupees. This is brought to cover all transactions of retail sales and accordingly it will not apply on sale of motor vehicles by manufacturers to dealers/ distributors.

Question 2: Whether TCS at the rate of 1% is on sale of Motor Vehicle is applicable only to Luxury Cars?

Answer: No. As per sub section (1 F) of Section 206C of the Act the seller shall collect the tax at the rate of one per cent from the purchaser on sale of any motor vehicle of the value exceeding ten lakh rupees.

Question 3: Whether TCS at the rate of 1% is applicable in the case of sale to Government Departments. Embassies, Consulates and United Nation Institutions for sale of motor vehicle or any other goods or provision of services"

Answer: Government. institutions notified under United Nations (Privileges and Immunities) Act 1947. and Embassies, Consulates. High Commission. Legation, Commission and trade representation of a foreign State and shall not be liable to levy of TCS at the rate of I% under subsection (1 D) and (1 F) of section 206 C of the Act.

Question 4: Whether TCS is applicable on each sale of motor vehicle or on aggregate value of sale during the year?

Answer: Tax is to be collected at source at the rate of 1% on sale consideration of a motor vehicle exceeding ten lakh rupees. It is applicable to each sale and not to aggregate value of sale made during the year. This can be explained by way of an illustration:

Illustration: Motor vehicle worth 20 lakh is sold and for which payments are made in instalments, one at the time of booking and the other at the time of delivery . At the time of booking 5 lakh rupees are paid and 15 lakh rupees are paid at the time of delivery. Tax at the rate of 1% on 5 lakh rupees at the time of booking and at the rate of I % on remaining 15 lakh rupees at the time of delivery shall be collected at source.

Similar will be the position with regard to collection of tax at source under sub-section (1 D) of section 206C.

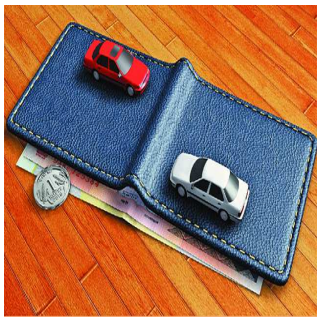
Question 5: whether TCS at the rate of 1% on sale of motor vehicle is applicable in case of an individual?

Answer: The definition of "Seller" as given in clause (c) of the Explanation below subsection (11) of section 206C shall be applicable in the case of sale of motor vehicles also Accordingly, an individual who is liable to audit as per the provisions of section 44AB of the Act during the financial year immediately preceding the financial year in which the motor vehicle is sold shall be liable for collection of tax at source on sale of motor vehicle by him.

Question 6: How would the provisions of TCS on sale of motor vehicle be applicable in a case where part of the payment is made in cash and part is made by cheque?

Answer: The provisions of TCS on sale of motor vehicle exceeding ten lakh rupees is not dependent on mode of payment. Any sale of Motor Vehicle exceeding ten lakh would attract TCS at the rate of 1%.

Question 7: As per section 206C(1 D) , tax is to be collected at source at the rate of 1% if sale consideration received in cash exceeds 2 lakh rupees whereas as per section 206C(1F) tax is to be collected at source at the rate of 1% of



"Seller shall collect TCS @ 1% on sale of any Motor Vehicle exceeding Rs. 10 Lakhs"

the sale consideration of a motor vehicle exceeding 10 lakh rupees . Whether TCS will be made under both sub-section(ID) and (IF) of the section 206C @ 2% where part of the payment for purchase of motor vehicle exceeds 2 lakh rupees in cash?

Answer: Sub-section (IF) of the section 206C of the Act provides for TCS at the rate of I% on sale of motor vehicle of value exceeding 10 lakh rupees. This is irrespective of the mode of payment. Thus if the value of motor vehicle is 20 lakh rupees, out of which 5 lakh rupees has been paid in cash and balance amount by way of cheque , the tax shall be collected at source at the rate of 1% on total sale consideration of 20 lakh rupees only under sub-section (IF) of section 206C of the Act. However, if a vehicle is sold for 8 lakh rupees and the consideration is paid in cash, tax shall be collected at source at the rate of 1% on 8 lakh rupees as per sub-section(I D) of section 206C of the Act.

TCS on Sale of good/Services only if Cash Receipt exceeds 2 Lakh

"Rate of 1% will apply in cases where the sale consideration received is party in cash"

In order to curb the cash economy, Finance Act 2016 has amended section 206C of the Income-tax Act to provide that the seller shall collect tax at the rate of one per cent from the purchaser on sale in cash of certain goods or provision of services exceeding two lakh rupees. Subsequent to the amendment, a number of representations were received from various stakeholders with regard to the scope of the provisions and the procedure to be followed in case of the amended provisions of Section 206C of the Act. The Board, after examining the representations of the stakeholders, issued FAQs vide Circular No.22/2016 dated 8th June, 2016. The Board has further decided to clarify the issue as regards applicability of the provisions relating to levy of TCS where the sale consideration received is partly in cash and partly in cheque by issue of an addendum to the above circular in the form of question and answer as under:

Question 1: Whether tax collection at source under section 206C(1D) at the rate of 1% will apply in cases where the sale consideration received is partly in cash and partly in cheque and the cash receipt is less than two lakh rupees.

Answer: No. Tax collection at source will not be levied if the cash receipt does not exceed two lakh rupees even if the sale consideration exceeds two lakh rupees.

Illustration: Goods worth Rs. 5 lakhs is sold for which the consideration amounting to Rs.4 lakhs has been received in cheque and Rs. 1 lakh has been received in cash. As the cash receipt does not exceed Rs.2 lakh, no tax is required to be collected at source as per section 206C (1D).

Question 2: Whether tax collection at source under section 206C (1D) will apply only to cash component or in respect of whole of sales consideration.

Answer: Under section 206C (1D), the tax is required to be collected at source on cash component of the sales consideration and not on the whole of sales consideration.

Illustration: Goods worth Rs. 5 lakhs is sold for which the consideration amounting to Rs.2 lakhs has been received in cheque and Rs.3 lakh has been received in cash. Tax is required to be collected under section 206C (1D) only on cash receipt of Rs. 3 lakhs and not on the whole of sales consideration of Rs. 5lakh.

Relaxation from deduction of tax at higher rate U/s. 206AA

In exercise of the powers conferred by clause (ii) of sub-section (7) of section 206AA, read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (17th Amendment) Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962 (hereafter referred to as the said rules), after rule 37BB, the following rule shall be inserted, namely :-

"37BC. Relaxation from deduction of tax at higher rate under section 206AA.– (1) In the case of a non-resident, not being a company, or a foreign company (hereafter referred to as 'the deductee') and not having permanent account number the provisions of section 206AA shall not apply in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset, if the deductee furnishes the details and the documents specified in sub-rule (2) to the deductor.

(2) The deductee referred to in sub-rule (1), shall in respect of payments specified therein, furnish the following details and documents to the deductor, namely :-

(i) name, e-mail id, contact number;

(ii) address in the country or specified territory outside India of which the deductee is a resident;

(iii) a certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory if the law of that country or specified territory provides for issuance of such certificate;

(iv) Tax Identification Number of the deductee in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident.

3. In the said rules, in Appendix II, in Form No. 27Q,-

(a) in the second line, after the figures and letters "194LB", the figures and letters "194LBA, 194LBB,194 LBC" shall be inserted;

(b) in the Annexure,-

(I) in the Table,-

(i) in the column 717, in the column heading, after the letters and words "PAN of the deductee", the brackets, words and figure "[see Note 5]" shall be inserted;

(ii) after column 734, the following shall be inserted, namely :—

Email ID of deductee

Contact number of deductee

Address of deductee in country of residence

Tax Identification Number / Unique identification number of deductee

(II) in the Notes below the Table,-

(A)in point 4, in the Table, after entry 194LB, the following shall be inserted, namely: —

194LBA – Certain income from units of a business trust

194LBB - Income in respect of units of investment fund

194LBC - Income in respect of investment in securitisation trust

(B) after point 4 and below the Table, the following point shall be inserted namely:—

'5. In case of deductees covered under rule 37BC, "PAN NOT AVAILABLE" should be mentioned.'."

CBDT notifies dates for General Anti Avoidance Rule

In exercise of the powers conferred by section 101, read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (16th Amendment) Rules, 2016.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962, in rule 10U,-

(i) in sub-rule (1), in clause (d), for the figures, letters and words "30th day of August, 2010", the figures, letters and words "1st day of April, 2017" shall be substituted;

(ii) in sub-rule (2), for the figures, letters and words "1st day of April, 2015", the figures, letters and words "1st day of April, 2017" shall be substituted.

Exporters claiming Service Tax Refund to file additional documents

Applicability of the scheme

At the outset it is reiterated that this scheme is not a substitute for the various notifications but is meant to complement them and is aimed at enabling ease of doing business. It has to operate within the general parameters of the notifications governing such refunds.

This scheme is applicable only to service tax registrants who are exporters of services, with respect to refund claims under rule 5 of the CENVAT Credit Rules, 2004, which have been filed on or before 31-3-2015, and which have not been disposed of as on the date of the issue of the circular dated 10-11-2015. As clarified therein, claims which have been remanded are out of the purview of this scheme.

Additional documents to be submitted (i.e. in addition to those required to be filed along with the claim)

At the outset, the relevance of the certificate has to be clearly understood. It is not a substitute for verification by the refund sanctioning authority. It will ensure diligence on the part of the claimant and the statutory auditor, which will make him eligible for a provisional payment of 80% of the claimed amount. It had been clarified in the circular that the decision to grant provisional payment is an administrative order and not a quasi-judicial order and should not be subjected to review. There is thus no reason to treat either the certificate or the provisional payment with fear or suspicion.

The certificate has to be furnished by the statutory auditor in the case of companies, and from a chartered accountant in the case of assessees who are not companies, in the prescribed format. The phrase "statutory auditor" will refer to the auditor who prepares the financial statements under the Companies Act 2013. The certificate cannot be furnished by a Cost and Management Accountant or a Company Secretary. In the case of companies, it cannot be furnished by a Chartered Accountant who is not the statutory auditor.

The certificate has to be given in the format given in Annexure-1 to the circular dated 10-11-2015. During the conference of Service Tax Chief Commissioners and Commissioners in November 2015 itself, it had been clarified that "the averments in Annexure-1 have to be made and any general additional remarks, which do not negate the wording of paragraphs 1.1 to 1.4, may be ignored." Inspite of this it has been reported that general disclaimers by the auditor are resulting in the rejection of the certificate and consequently the claim for 80% provisional payment.

It must be understood that auditors while discharging their duties are bound by the provisions of the statute governing them as well as Guidance Notes, Accounting Standards etc relating to their profession. The Institute of Chartered Accountants of India has issued Guidance Notes on reports and certificates issued by auditors. These Guidance Notes relate to situations where the auditor has freedom with respect to the wording of a certificate as well as to situations where he has to adhere to a prescribed format. In both situations the auditor has to indicate the manner in which the audit was done, assumptions, limitations in scope and reference to information and explanations ob-

tained in the certificate. Adherence of the auditors to these requirements should not be considered to be violations of the circular. If at all, by mentioning that they have adhered to the various legal and accounting requirements, they are adding value to their certificate. It is clarified once again that as long as the four points which are contained in Annexure-1 to the circular dated 10-11-2015 are present, the certificate should not be rejected on the ground of any disclaimers which the auditor has to give, owing to the Guidance Notes.

Companies (Acceptance of Deposits) Amendment Rules, 2016

In exercise of the powers conferred by sections 73 and 76 read with sub-section (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Acceptance of Deposits) Rules, 2014, namely:-

(1) These rules may be called the Companies (Acceptance of Deposits) Amendment Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Acceptance of Deposits) Rules, 2014 (hereinafter referred to as the principal rules), in rule 2, in sub-rule (1), in clause (c),-

(i) in sub-clause (ix), for the words "five years" the words "ten years" shall be substituted;

(ii) after sub-clause (ix), the following sub-clause shall be inserted, namely,-

"(ixa) any amount raised by issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India.";

(iii) for sub-clause (xi), the following sub-clause shall be substituted, namely:-

"(xi) any non-interest bearing amount received and held in trust;";

(iv) in sub-clause (xii),-

(A) after item (d) and before the proviso, the following items shall be inserted, namely:-

"(e) as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less;

(f) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;

(g) as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications; ".

(B) in the Explanation, the words "referred to in the proviso" shall be omitted;

(v) in the Explanation, after sub-clause (xiv), for the words "shall be treated as deposits", the words "shall be considered as deposits unless specifically excluded under this clause" shall be substituted;

(vi) after sub-clause (xiv), the following sub-clauses shall be inserted, namely:-

(xv) any amount received by way of subscription in respect of a chit under the Chit Fund Act, 1982 (40 of 1982);

(xvi) any amount received by the company under any collective investment scheme in compliance with regulations framed by the Securities and Exchange Board of India;

(xvii) an amount of twenty five lakh rupees or more received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding five years from the date of issue) in a single tranche, from a person.

Explanation.- For the purposes of this sub-clause,-

I. "start-up company" means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry;

II."convertible note" means an instrument evidencing receipt of money initially as a debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of the start-up company upon occurrence of specified events and as per the other terms and conditions agreed to and indicated

in the instrument.

(xviii) any amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds and Mutual Funds registered with the Securities and Exchange Board of India in accordance with regulations made by it.".

3. In Rule 3 of the Principal rules,-

(i) in sub-rule (3),-

(a) for the words "twenty five per cent.", the words "thirty five per cent." shall be substituted;

(b) the following proviso shall be inserted namely:

"Provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.".

(ii) for sub-rule (8), the following sub-rule shall be substituted, namely:-

"(8).- (a) Every eligible company shall obtain, at least once in a year, credit rating for deposits accepted by it and a copy of the rating shall be sent to the Registrar of Companies alongwith the return of deposits in Form DPT-3.

(b) The credit rating referred to in clause (a) shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits, from any one of the approved credit rating agencies as specified for Non-Banking Financial Companies in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, issued by the Reserve Bank of India, as amended from time to time."

4. in rule 4 of the principal rules, for sub-rule (2), the following sub-rule shall be substituted, namely:-

" (2) Every eligible company intending to invite deposits shall issue a circular in the form of an advertisement in form DPT-1 for the purpose in English language in an English newspaper having country wide circulation and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated, and shall also place such circular on the website of the company, if any.".

5. in rule 5 of the principal rules, in sub-rule (1), for the proviso, the following proviso shall be substituted, namely:-

"Provided that the companies may accept deposits without deposit insurance contract till the 315t March, 2017 or till the availability of a deposit insurance product, whichever is earlier.".

6. after rule 16 of the principal rules, the following rule shall be inserted, namely:-

"16A. Disclosures in the financial statement.- (1) Every company, other than a private company, shall disclose in its financial statement, by way of notes, about the money received from the director.

(2) Every private company shall disclose in its financial statement, by way of notes, about the money received from the directors, or relatives of directors.".

7. in the principal rules, in the Annexure, in Form DPI-I, the following para shall be inserted, namely:-

"6. DISCLAIMER.- It is to be distinctly understood that filing of circular or circular in the Form of advertisement with the Registrar should not in any way be deemed or construed that the same has been cleared or approved by the Registrar or Central Government. The Registrar or Central Government does not take any responsibility either for the financial soundness of any deposit scheme for which the deposit is being accepted or invited or for the correctness of the statements made or opinions expressed in the circular or circular in the Form of advertisement. The depositors should exercise due diligence before investing in the deposits schemes."

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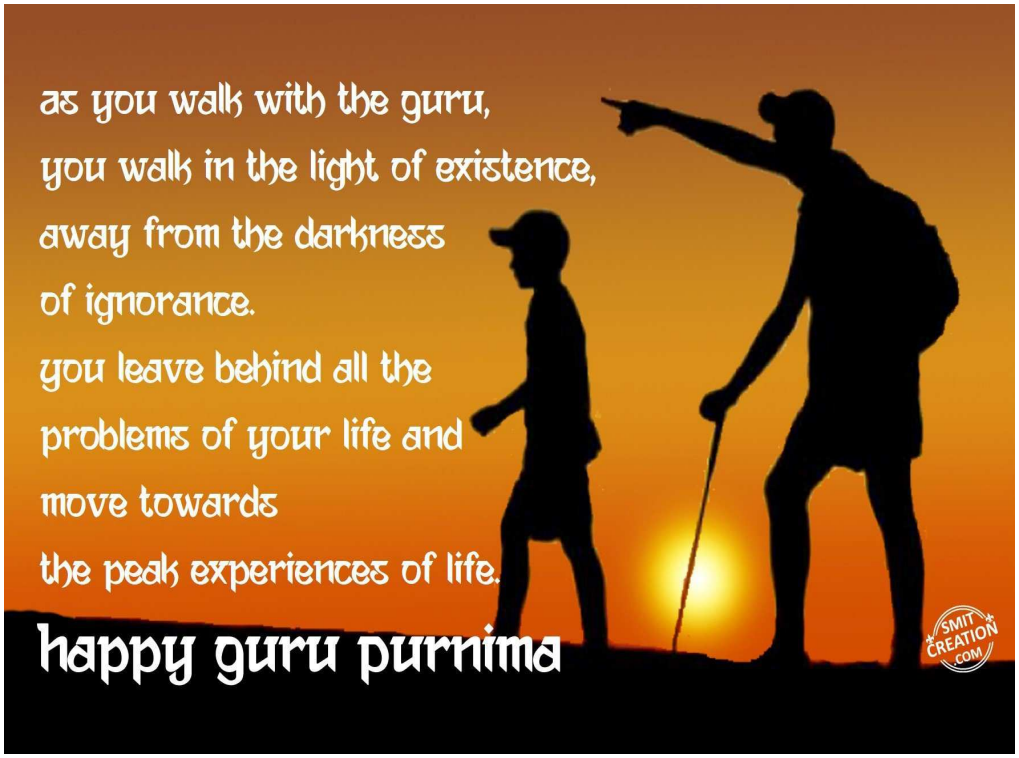

Solution to problems faced by CAs in registering DSC on MCA

In case you are unable to register your DSC on MCA portal because your name in the PAN card is not as per the ICAI records, you may send fill up the form in the given link :-

http://online.icai.org/app_forms/panupdate/index.html

And kindly attach a scanned copy of your PAN card along with copy of any of the documents in which your name is as in your PAN card

- Passport
- Aadhar Card
- Driving License
- Bank passbook with a photo affixed and duly signed by the bank
- Voters' Identity card

This will enable ICAI to carry out the necessary alignment to ICAI records to share the same to MCA for their further actions.

Ministry of Corporate Affairs
Govt. of India

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